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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 **CRAIG RICHARD CHANDLER,**

17-cv-00325-EMC

14 Petitioner,

EXHIBITS

15 v.

16 **SCOTT FRAUENHEIM, Warden,**

17 Respondent.
18
19

20 Exhibit 2 Augmentation to State Court Clerk's Transcript

21 Exhibit 3 State Court Reporter's Transcript (Vols. 1-6)
22
23
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27
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EXHIBIT 2

COURT OF APPEAL, STATE OF CALIFORNIA,
IN AND FOR THE SIXTH APPELLATE DISTRICT

THE PEOPLE

*PLAINTIFF
AND RESPONDENT*

V.

CRAIG RICHARD CHANDLER

*DEFENDANT
AND
APPELLANT*

COURT OF APPEAL NO.: **H040429**

SUPERIOR COURT CASE #: **C1223754**

☒ AUGMENTATION TO THE CLERK'S TRANSCRIPT ON APPEAL

☐ AUGMENTATION TO THE CLERK'S TRANSCRIPT ON APPEAL PURSUANT TO CRC 8.340

☐ SUPPLEMENTAL CLERK'S TRANSCRIPT

NOTICE OF COMPLETION OF AUGMENTATION: APRIL 30, 2014

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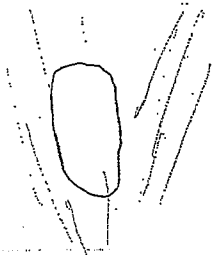
No. C1223754 Exh # 7

☒ Identification ☒ Admitted

PEOPLE vs CHANDLER

Date JUL 18 2013 Clerk STAFFORD

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 CAMBRIDGE
Limited

No. C1223754 Exh # 24

☒ Identification

☒ Admitted

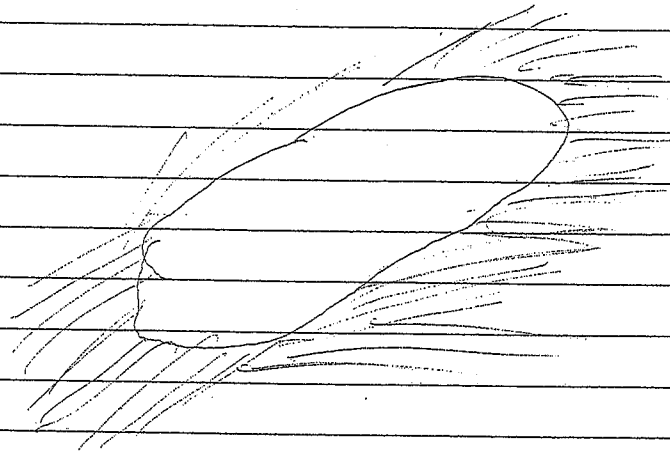
PEOPLE

vs CHANDLER

Date JUL 25 2013

Clerk STAFFORD

3863-A REV 2/86



IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE

V.

CRAIG RICHARD CHANDLER

COURT OF APPEAL NO. H040429
SANTA CLARA COUNTY NO. C1223754

CLERK'S CERTIFICATE

I, K. MILLER, DEPUTY COUNTY CLERK OF THE COUNTY OF SANTA
CLARA, STATE OF CALIFORNIA, DO CERTIFY THE FOLLOWING:

In response to the Augmentation order filed 04/08/14, I am transmitting item C to the Sixth District Court of
Appeal:

"Copy of People's Exhibit No. 16 (DVD containing audio & video from the defendant's iPhone), admitted
into evidence on July 29, 2013."

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND THE SEAL OF SAID
SUPERIOR COURT, THIS


04/30/2014

DATE



DAVID H. YAMASAKI
CHIEF EXECUTIVE OFFICER/CLERK

K. MILLER


DEPUTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

PLAINTIFF: THE PEOPLE OF THE STATE OF CALIFORNIA

DEFENDANT: CRAIG RICHARD CHANDLER

NOTICE OF COMPLETION OF:

☒ CLERK'S TRANSCRIPT ☒ REPORTER'S TRANSCRIPT
☐ CORRECTIONS/ADDITIONS ☒ AUGMENTATION

CASE NUMBER: C1223754

YOU ARE HEREBY NOTIFIED THAT THE TRANSCRIPT(S) ON APPEAL IN THE ABOVE-ENTITLED ACTION HAVE BEEN COMPLETED.

CLERK'S CERTIFICATE OF MAILING

I CERTIFY THAT I AM NOT A PARTY TO THIS CAUSE AND THAT A TRUE COPY OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE FULLY PREPAID IN A SEALED ENVELOPE ADDRESSED AS SHOWN BELOW AND THE DOCUMENT WAS MAILED AT

DAVID H. YAMASAKI, COURT CLERK

SAN JOSE, CALIFORNIA ON APRIL 30, 2014

BY: 
K. MILLER DEPUTY CLERK

COURT OF APPEAL
SIXTH APPELLATE DISTRICT
333 W. SANTA CLARA ST. STE. 1060
SAN JOSE, CA 95113

ATTORNEY GENERAL
455 GOLDEN GATE AVENUE
ROOM 11000
SAN FRANCISCO, CA 94102

JEFFREY S. KROSS
P O BOX 2252
SEBASTOPOL, CA 95473-2252

I, K. MILLER, Deputy Clerk of the Superior Court of the State of California, County of Santa Clara, do hereby certify the foregoing to be a full, true, and correct copy of documents requested and/or specifically identified on the index pages of the Clerk's Transcript on Appeal, as the same now appear on file in this office.

I further certify that I have complied with CCP 237 (a) (2) in that all personal juror identifying information has been redacted, if applicable.

In witness, I have hereunto set my hand and the seal of said Superior Court, this: April 30, 2014



DAVID H. YAMASAKI
CHIEF EXECUTIVE OFFICER/CLERK

BY:

K. MILLER

DEPUTY CLERK

THE PEOPLE V. CRAIG RICHARD CHANDLER

CASE NUMBER: C1223754

EXHIBIT 3

(Vol. 1)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)	COURT OF APPEAL NO.
)	
PLAINTIFF AND RESPONDENT,)	SUPERIOR COURT NO. C1223754
)	
vs.)	VOL. 1
)	
CRAIG RICHARD CHANDLER,)	PAGES 1~19
)	
DEFENDANT AND APPELLANT.)	
)	

FILE COPY

FROM THE SUPERIOR COURT OF SANTA CLARA COUNTY
HONORABLE ROBERT M. FOLEY, JUDGE
REPORTER'S TRANSCRIPT ON APPEAL

JUNE 13, 2012

A P P E A R A N C E S:

FOR THE PLAINTIFF OFFICE OF THE ATTORNEY GENERAL
AND RESPONDENT: 455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102

FOR THE DEFENDANT SIXTH DISTRICT APPELLATE PROGRAM
AND APPELLANT: 100 N. WINCHESTER BLVD., SUITE 310
SANTA CLARA, CA 95050

ASHLEY PARROTT, CSR 13157
OFFICIAL COURT REPORTER

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 BEFORE THE HONORABLE ROBERT M. FOLEY, JUDGE
4 DEPARTMENT 52
5

6
7 THE PEOPLE OF THE STATE OF CALIFORNIA,)
8 Plaintiff,)

9 vs.)

NO. C1223754

10 CRAIG RICHARD CHANDLER,)
11 Defendant.)
12

13
14 REPORTER'S TRANSCRIPT

15 MOTION TO SET BAIL

16 JUNE 13, 2012
17

18
19 A P P E A R A N C E S:

20 FOR THE PEOPLE: ALISON FILO, ESQ.
21 DEPUTY DISTRICT ATTORNEY

22 FOR THE DEFENDANT: BRIAN MADDEN, ESQ.
23 ATTORNEY AT LAW
24

25
26
27 ASHLEY PARROTT, CSR NO. 13157
28 OFFICIAL COURT REPORTER

1 WEDNESDAY, JUNE 13, 2012; SAN JOSE, CALIFORNIA

2 P R O C E E D I N G S

3 -oOo-

4 THE COURT: The People versus Craig Richard Chandler,
5 who is present in court. Would counsel identify themselves
6 please?

7 MR. MADDEN: Brian Madden appearing for the defendant.
8 He is personally present.

9 THE COURT: You desire me to set bail in this case?

10 MR. MADDEN: That's the request by this motion. Yes.

11 THE COURT: I've read and considered your moving papers
12 and the report from the office of pretrials services.

13 MR. MADDEN: I have one other document I wanted to give
14 to the Court. I've given a copy of it to the People
15 previously. That is the June 12th letter from LCA that I
16 refer to in my moving papers.

17 THE COURT: Any objection to my reviewing this?

18 MS. FILO: No, Your Honor.

19 THE COURT: Thank you very much.

20 MS. FILO: I guess I should state, Your Honor, first of
21 all, Alison Filo appearing for the People. Good afternoon.
22 I do have an objection to Court considering the motion at
23 all.

24 THE COURT: Basis?

25 MS. FILO: Your Honor, this issue was raised in front
26 of Judge McKay McCoy less than a month ago, at the
27 conclusion of the preliminary hearing, three-day-long long
28 cause hearing which was commenced on May 21st. The motion

1 for setting of bail was brought by counsel at that time.
2 Not this counsel but another attorney. All of the same
3 issues were raised in front of her. I brought a copy of
4 that transcript for the Court on the off-chance you had not
5 seen it.

6 THE COURT: I haven't seen it.

7 MS. FILO: Because this issue has been litigated and
8 the defendant's motion was denied, no change of
9 circumstances has been shown. And the People would object
10 to it being heard at all. I think the remedy here is a writ
11 or motion for reconsideration.

12 THE COURT: If I can see that transcript please.

13 MR. MADDEN: Your Honor, let the record reflect that I
14 have not seen this transcript.

15 THE COURT: Show it to Mr. Madden please.

16 MS. FILO: I'm sorry.

17 MR. MADDEN: Before I get to that, in the interest of
18 time, I have not represented Mr. Chandler until the
19 arraignment after the preliminary examination. I have read
20 all of the police reports up to date; however, I've not been
21 able to obtain a copy of the preliminary hearing transcript.

22 THE COURT: But I take it this is --

23 MR. MADDEN: I have no doubt that that's the case. But
24 I just want to address: First of all, there is no -- I'm
25 not exactly sure what Ms. Filo's point is as if there was
26 some statutory or caselaw telling you how many times you can
27 have a bail motion. There's no authority for limiting it to
28 one, just as a matter of law.

1 But, most importantly, it's my understanding --
2 and I was not at the prelim and haven't read the transcript
3 but -- it's my understanding that the bail motion was not a
4 noticed motion. There were no papers filed. I believe it
5 was something of a summary nature presented orally after
6 there was a holding order that -- I'm guessing here -- took
7 just a few pages.

8 And it's my understanding that -- I'm informed and
9 I believe -- that Judge McKay McKoy indicated that she was,
10 at that point, obviously, denying the motion for bail, but
11 it was my understanding that she indicated she was doing so
12 without prejudice, realizing that the defendant would be
13 bringing that motion again in front of another court after
14 the arraignment.

15 THE COURT: Let him see the preliminary examination
16 transcript.

17 MS. FILO: Sure, Your Honor. I think I got the full
18 transcript yesterday or, maybe, the day before.

19 MR. MADDEN: Thank you.

20 (Pause in the proceedings.)

21 MR. MADDEN: I'm finished, Your Honor. I have no
22 difficulty with the Court reading it. But I would call the
23 Court's attention to Page 514 lines 27 to 28. Let me read
24 it: The motion to reduce bail is denied without prejudice.
25 Some other judge may feel differently or analyze the case
26 differently from the way I do.

27 THE COURT: You have affirmative evidence that was
28 never presented to Judge McKay McCoy?

1 MR. MADDEN: There was, virtually, no evidence
2 presented to her. It was argument of Mr. Clark the sum
3 total of which takes approximately five pages. And that's
4 including everything that the district attorney and
5 Mr. Clark and the Court said. I'm not faulting him. He
6 just made an off-the-cuff, informal motion. As the court
7 can see from my papers, that's not what I've done.

8 THE COURT: I would not expect you to do something like
9 that, Mr. Madden. Judge McKay McCoy denied the request for
10 bail without prejudice. I think he is entitled to bring his
11 motion.

12 MS. FILO: Your Honor, I think the problem is every
13 bail motion has to be denied without prejudice because, if
14 there is a change in circumstance, the defendant is
15 absolutely entitled to bring that before a new magistrate or
16 new judge and have that issue reexamined. It always has
17 been without prejudice.

18 But Judge McKay McCoy -- I think the argument here
19 is that you cannot present the same set of circumstances to
20 a judge every three weeks, hoping that the decision will be
21 different. There's no different information presented to
22 this Court. The information about Mr. Chandler's criminal
23 history was presented to Judge McKay McCoy. The information
24 about his ties to the community was presented to her. The
25 information that the crimes occurred in a classroom and he
26 would not be returning to that setting was presented to her.
27 The argument that he had no other history was presented to
28 her. The offer that he be placed on electronic monitoring

1 was presented to her.

2 These exact same arguments were presented to Judge
3 McKay McKoy. She heard three days worth of testimony from
4 live victims. This was not a Prop 115 hearing. I can tell
5 you what her comments were at the end of that hearing. She
6 was -- I think fair to say -- beyond appalled by the
7 defendant's conduct, and what she believed was sufficient
8 evidence to hold him to answer as charged. So I think it
9 is -- I think bringing this motion again within three weeks
10 with no change of circumstance is really judge shopping.

11 THE COURT: May I see the transcript?

12 MS. FILO: Absolutely. If I can approach, Your Honor.

13 (Ms. Filo approached the bench.)

14 (Pause in the proceedings.)

15 THE COURT: Any reply, Mr. Madden? I've read the
16 transcript.

17 MR. MADDEN: I believe the transcript --

18 In terms of the representations I made earlier
19 concerning the issue of the motion being made without
20 prejudice, it was, obviously, not a noticed motion. What
21 I'm proposing here is far different than -- I disagree with
22 the People -- I'm presenting information to the Court that
23 was not in front of this Court.

24 I'd also point out that Ms. Filo was given my
25 moving papers two days ago, and I don't have any moving
26 papers supporting her position, and I've not heard a statute
27 or case mentioned supporting her position. So I believe
28 that we are entitled to this hearing as a matter of right,

1 as I've indicated in my moving papers, and I wish to
2 proceed.

3 THE COURT: Might I have an offer of proof?

4 MR. MADDEN: Yes. What I want to do is address the
5 Court concerning the pivotal issues which I think are the
6 present dangerousness of the defendant; that is, danger to
7 the public, danger to other children in the community which,
8 I think, is, obviously, one of the critical inquiries. And
9 I want to address the issues of the defendant's flight risk
10 which, also, is absolutely a pivotal issue.

11 I don't intend to have live witnesses testify;
12 however, there are approximately 12 family members and close
13 friends who have come from within 75 miles of this
14 courthouse who are here today that I'd like to identify.

15 And I also have presented the document from LCA, a
16 letter from Lee Smith, which I think is very important
17 because I'm asking the Court not just to set bail but to, in
18 addition to that -- I have absolutely no difficulty with him
19 being released conditionally. For example, released and
20 monitored on EMP, GPS, you know, areas where he cannot go or
21 areas he is to go, being subjected to a curfew.

22 What I want to do is present evidence to the Court
23 to convince the Court that there is absolutely no danger --
24 no realistic danger -- of my client fleeing and certainly no
25 substantial likelihood or probability of him endangering any
26 other children in the community at this point.

27 THE COURT: You may proceed.

28 MR. MADDEN: Thank you.

1 THE COURT: I've read and considered this letter dated
2 June 12, 2012, from LCA monitoring.

3 MR. MADDEN: Thank you very much. I should point out
4 Mr. Smith is also present and standing. Thank you.

5 THE COURT: We've met.

6 MR. MADDEN: Should the Court, at any time, have
7 questions concerning --

8 THE COURT: I'm pretty familiar with the program.

9 MR. MADDEN: I am not going to have any of the
10 aforementioned family and friends testify, but I would like
11 to have them identified and have each of them stand so the
12 Court will know who they are.

13 THE COURT: Please do so.

14 MR. MADDEN: Thank you.

15 Maria Chandler. This is the defendant's wife.

16 THE COURT: Good afternoon, ma'am.

17 MR. MADDEN: Peterann Yousecoff and her husband Walt
18 Yousecoff. These are -- Ms. Yousecoff is the defendant's
19 mother. She lives with Mr. Yousecoff in Monterey.

20 THE COURT: Good afternoon. Welcome to Department 52.

21 MR. MADDEN: Fran and Tom Denton.

22 THE COURT: Good afternoon, folks.

23 MR. MADDEN: Mr. and Mrs. Denton are the defendant's
24 wife's parents. They live in Vallejo. Thank you.

25 Katherine. Katherine Denton is the defendant's
26 aunt. She's an appellate attorney and lives in San
27 Francisco.

28 THE COURT: Good afternoon, ma'am.

1 MR. MADDEN: Sue Lewman. Ms. Lewman is the defendant's
2 aunt, and she lives in Castroville. Thank you.

3 THE COURT: Good afternoon.

4 MR. MADDEN: Julia Silvestri. Julia Silvestri is a
5 cousin of the defendant. She lives in Danville.

6 THE COURT: Good afternoon.

7 MR. MADDEN: And Mr. Castillo. Mr. Castillo is a
8 family friend. He lives in Salinas. Thank you, sir.

9 THE COURT: Good afternoon, sir.

10 MR. MADDEN: Barbara Lucino and Joe Lucino. Mr. and
11 Mrs. Lucino are close family friends. They live in
12 Monterey.

13 And, finally, we have Rachel.

14 THE COURT: Good afternoon, folks. Thank you for
15 coming.

16 MR. MADDEN: She is the defendant's sister-in-law.

17 THE COURT: Good afternoon.

18 MR. MADDEN: Your Honor, basically, should I call these
19 witnesses to testify, they would all testify, essentially,
20 as his character witnesses, giving their opinion that they
21 do not believe that the defendant is present danger to the
22 children, and, secondly, they do not feel he would be at
23 flight risk. And I'm prepared, if the Court will accept the
24 representation as to what they would testify to, to proceed
25 to argument without calling these witnesses.

26 THE COURT: I will assume that that evidence would be
27 before the Court.

28 MR. MADDEN: Thank you, Your Honor.

1 THE COURT: So you may comment.

2 MR. MADDEN: All right.

3 THE COURT: No arguments in my court. You may comment,
4 express your views, make observations. No arguments.
5 Arguments are confined to six-year-old children.

6 MR. MADDEN: I tend to agree with that, Your Honor.
7 Unfortunately, many times in my adult life I've argued.

8 THE COURT: Not in my court.

9 MR. MADDEN: That's true. All right. So I think
10 this --

11 Does the Court mind if I sit?

12 THE COURT: No, I don't mind at all.

13 MR. MADDEN: I think that the starting place is:
14 Obviously, with these charges, the schedule is no bail.
15 That's our starting place. On the other hand, as I've
16 stated in my points and authorities, notwithstanding the
17 fact that this is a violent felony, the defendant, even
18 though it's a violent felony, is entitled to a bail hearing
19 which is what we are having. And, in that hearing, the
20 issues that the Court has to address -- I've addressed in my
21 moving papers -- they are found in section 1271. Also, 1275
22 of the Penal Code is also relevant in terms of finding
23 dangerousness. I think I would like to turn my attention to
24 that right now.

25 Penal Code Section 1275 states or the heading is:
26 Matters considered in fixing amount of bail, reduction of
27 bail below approved schedule. In setting, reducing, or
28 denying bail, the judge or magistrate shall take into

1 consideration the protection of the public, the seriousness
2 of the offense charged, the previous criminal record of the
3 defendant, and the probability of his or her appearing at
4 trial or hearing in this case.

5 It goes on, and subparagraph (b) will state: In
6 considering the seriousness of the offense charged, the
7 judge or magistrate shall include consideration of the
8 alleged injury to the victim and the alleged threats to the
9 victim or a witness of the crime charged, the alleged use of
10 a firearm or other deadly weapon in the commission of the
11 crime charged, and the alleged use or possession of
12 controlled substances by the defendant.

13 I think that last paragraph is particularly
14 important because, when you analyze those things, none of
15 those items that I just read are present in this case.
16 There is -- although I haven't read the preliminary
17 examination transcript as I previously indicated, I have
18 read the police report. And, obviously, since these cases
19 are charged as Penal Code Section 288 (a), notwithstanding
20 multiple victim allegations, they aren't 288 (b) counts.
21 These are non-forceable sex counts.

22 Furthermore, I'm not aware, from reading the
23 police reports, that there were any threats to any of the
24 complaining witnesses in this case. From reading the police
25 report, it's clear to me that there were no physical
26 injuries to the children. I'm not going to address the
27 issue of emotional injuries since that would be
28 inappropriate at this point and speculative. However, there

1 appears to have been no medical injuries. There, certainly,
2 was no use of a firearm or any use of controlled substances.

3 These are statutory things in terms of the
4 seriousness of the offense the Court has to concern itself
5 with. So, if we take a look at Mr. Chandler, with the
6 exception of what I would refer to a minor criminal record
7 that I've indicated in my moving papers, he has worked, for
8 ten years, as a school teacher. He is married. He is a
9 homeowner. He has a house in San Jose. It's within a mile
10 of this courthouse.

11 The children involved in this case all were
12 students of his at a school on the other side of town,
13 certainly more than five miles from here, not near his
14 house. I assume, since it was a public school, these
15 children live within reasonable proximity to that school.
16 Mr. Chandler has a young family himself. His wife is a
17 teacher. His children are very young. Four, 18 months, and
18 three months.

19 As the Court can tell from his family and friends
20 being here, he has close family. All of the people that
21 I've identified all live within 75 miles of this courthouse.
22 These are people who can and will take him in, depending on
23 what terms or terms and conditions the Court would order.
24 There's no reason to believe that he would flee. As I've
25 indicated in my moving papers, I'm in possession of his
26 passport. I would, certainly, be more than willing to
27 surrender that to the Court-designated person.

28 I realize, if bail is to be set, it would have to

1 be substantial bail. And I think substantial bail is, quite
2 frankly, in the area of \$250,000 which I consider to be very
3 substantial bail. But, in addition to that, I would expect
4 that the Court want more than that. The Court would
5 probably want electronic monitoring as outlined in
6 Mr. Smith's letter. And I think that would provide any
7 concern that we would have concerning dangerousness of other
8 children.

9 As the Court knows, I've handled hundreds of these
10 cases during my career, and I honestly cannot think of one
11 case I've had where the client re-offended during the
12 pendency of a criminal proceedings. And I've had many.
13 Now, that doesn't guarantee anything, but what I'm saying
14 is, in my experience, people without criminal records,
15 people who come from good families, people who have deep
16 ties to the community tend to answer these charges. They
17 are not a danger. They stay around. They follow the
18 court's orders. They appear at court appearances. And I
19 believe that Mr. Chandler is just that kind of person.

20 Certainly, running a defense in this case is going
21 to -- this is not relevant but I want to put it on the
22 record anyway -- running a defense in this case, in terms of
23 what's going to be needed, in terms of experts and testing
24 and stuff, it's very, very difficult to do when a client is
25 in custody. I'm not going to say it's a denial of due
26 process because that's wrong. It's not true. But I'm not
27 asking that Mr. Chandler be released so that he can abscond
28 or he could misbehave again and be charged with another

1 criminal offense. I have no issue that that's not going to
2 happen.

3 And I think he has enough of a background and
4 analysis of this case. And, as I've indicated in my moving
5 papers, not only section 1271 but also section 1275 would
6 certainly justify a finding of unusual circumstances that
7 would allow the Court to depart from the no bail schedule
8 and impose substantial bail under appropriate terms and
9 conditions. Thank you.

10 THE COURT: Thank you.

11 People's response please?

12 MS. FILO: Thank you, Your Honor. I think that, in
13 order for the Court to understand what this case really is,
14 the Court needs to hear the facts. And I apologize for
15 stating them this way, but this is what they are.

16 Mr. Chandler --

17 THE COURT: They are what they are.

18 MS. FILO: They are what they are.

19 THE COURT: You can't change them.

20 MS. FILO: Mr. Chandler was a second grade school
21 teacher who had his female students -- seven- and
22 eight-year-old little girls -- stay behind during their
23 recess. He locked the door. He put a blindfold on them.
24 And he put his penis in their mouth. There was sperm found
25 on the chairs which the girls described.

26 Certainly, those can't be described as acts of
27 force because these little girls didn't know what was
28 happening to them. But I can assure you that it is not

1 conduct that they wanted or that they were willingly engaged
2 in. So this is some of the most horrific conduct that, I
3 think, any parent of a child can imagine.

4 He violated his position of trust. He violated
5 his position of authority. And the conduct that's involved
6 here is, like I say, some of the worst I have ever seen.
7 And I've been doing sex cases for a very long time as well.

8 So I acknowledge that Mr. Chandler has a wonderful
9 support system, but I find that to be all the more offensive
10 that he would commit this conduct with a loving family and
11 with people who, also, put their trust in him; I find it
12 more reprehensible.

13 I think that Mr. Chandler represents the most
14 extreme risk not only to re-offend but also to flee. The
15 idea that he would violate the social contract, the
16 employment contract, and morality contract that every single
17 person is charged with following, and that he would adhere
18 to a court date when he faces 75 years to life in prison, I
19 think, is almost laughable.

20 He has shown his disdain for his society. The
21 Court has to accept that the charges in this case are true.
22 I would invite the Court to flip back just five pages
23 earlier in the preliminary hearing transcript and read Judge
24 McKay McCoy's comments about the testimony that she heard,
25 the descriptions of the conduct that were given by these
26 very little children.

27 And I would ask the Court to do that before it
28 makes any determination that this defendant does not pose an

1 undeniable risk to our society and to this Court in failing
2 to appear.

3 THE COURT: Any response, Mr. Madden?

4 MR. MADDEN: No, Your Honor.

5 THE COURT: Okay.

6 MR. MADDEN: I'm sorry, Your Honor. There is something
7 I wanted to point out to the Court. I know you have a
8 document from pretrial services, which I'm sure you've read.
9 There was, as they stated, when they did their report, there
10 was concern of: Should the Court grant a bail motion, where
11 would he go?

12 A typical place would be to his home with his wife
13 and children. However, pretrial services expressed a
14 concern about the wisdom of that and asked him for a
15 secondary address. It was his mother who lives in Monterey.
16 And, whether it's his mother or any other family members or
17 friends, Mr. Chandler is more than willing to abide by an
18 order that he reside in any place that's reasonable, should
19 the Court be concerned about that. And I did address that
20 earlier. Thank you.

21 THE COURT: Thank you.

22 Well, I'm certainly satisfied that Mr. Chandler
23 has an excellent support system. But the inquiry does not
24 end there. I have considered the comments of Judge McKay
25 McCoy. And I don't find sufficient unusual circumstances to
26 depart from the bail schedule.

27 I also have in mind that I'm allowed to consider
28 the issue of public safety and victim impact. I am greatly

1 concerned that, if bail were set in this matter and
2 Mr. Chandler were released, it would have a grave emotional
3 impact upon the victims in this case. At that age, I could
4 conceive they would have nightmares with the thought that
5 he's out and about.

6 So, Mr. Madden, your motion to set bail is
7 respectfully refused. I will return the preliminary
8 examination transcript to the district attorney. And I take
9 it this matter has been set for further proceedings?

10 MR. MADDEN: Yes, Your Honor. Thank you.

11 THE COURT: It shall remain as set.

12 MS. FILO: Thank you, Your Honor.

13 THE COURT: Mr. Madden, always a pleasure to have you
14 in my courtroom.

15 MR. MADDEN: Thank you, Your Honor.

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) ss
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6

7 I, ASHLEY PARROTT, do hereby certify that
8 foregoing is a full, true and correct transcript of the
9 proceedings had in the within-entitled action on JUNE 13,
10 2012.

11 That, I reported the same in stenotype being the
12 qualified and acting official court reporter of the Superior
13 Court of the State of California, in and for the County of
14 Santa Clara, appointed to said court, and thereafter had the
15 same transcribed into typewriting as herein appears.

16 I further certify that I have complied with CCP
17 Section 237(a)(2), in that all personal juror identifying
18 information has been redacted, if applicable.
19
20
21

22 Ashley Parrott, CSR No. 13157
23
24
25
26
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28

EXHIBIT 3

(Vol. 2)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff-Respondent,
vs.

CRAIG RICHARD CHANDLER,

Defendant-Appellant.

COURT OF APPEAL
CASE NO.

SANTA CLARA COUNTY
CASE NO. C1223754

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON APPEAL
FROM THE SUPERIOR COURT
IN AND FOR THE COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

SEPTEMBER 28, 2012

VOLUME 2

Pages 251-291/400
20/

APPEARANCES:

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BARBEE MACHADO, CSR 9355, Official Reporter

COPY

20/251

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE KENNETH SHAPERO, JUDGE

CRAIG CHANDLER

Petitioner,

vs.

EVERGREEN SCHOOL DISTRICT,

Respondent.

NO. 1-12-cv-231067

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTIONS

SEPTEMBER 29, 2012

APPEARANCES:

For the Petitioner: CHRISTOPHER E. SCHUMB, ESQ.
and
BRIAN MADDEN, ESQ.

For the Respondent
Evergreen School
District: ADAM FISS, ESQ.

For San Jose Mercury
News: T. ANDREW HUNTINGTON, ESQ.

For Lyn Vijayendren: ERIC GEFFON, ESQ.

BARBEE MACHADO, CSR 9355, Official Reporter

1 SAN JOSE, CALIFORNIA

SEPTEMBER 28, 2012

2 PROCEEDINGS

3 THE COURT: On the record in C1236212, People of
4 the State of California versus Lyn Vijayendren.

5 MR. GEFFON: Good afternoon, Eric Geffon appearing
6 for Ms. Vijayendren. She is not present this afternoon.

7 THE COURT: And the People are not a party to this
8 motion at this time.

9 MR. HUNTINGTON: Good afternoon, Your Honor.
10 Andrew Huntington on behalf of San Jose Mercury News.

11 THE COURT: In addition we have for purposes of
12 these proceedings a related criminal matter C1223754, People
13 of the State of California versus Chandler.

14 MR. MADDEN: Brian Madden appearing for
15 Mr. Chandler. He is not present. I will waive his
16 appearance. Mr. Schumb is not co-counsel in the criminal
17 case; however, he is co-counsel -- I'm co-counsel with him
18 in this matter.

19 MR. SCHUMB: The writ matter, Your Honor.

20 THE COURT: We are technically not on the writ
21 matter at this point, but we will get there.

22 First of all on the Vijayendren. Procedurally to
23 remind us this Court conducted the arraignment of the
24 defendant. At that time upon application of the defense and
25 the People taking no position, the Court ordered sealed
26 three pages of the affidavit of probable cause that was part
27 of the filing in this matter. Thereafter, a motion for
28 unsealing was filed, and has been fully briefed. We can

1 discuss semantically whether it's a motion to unseal or a
2 motion to reconsider the Court's order to seal. In either
3 event, as the Court has explained to counsel, it's the
4 Court's intention to rule on the merits of the propriety of
5 sealing those documents, and with that in mind, Mr. Geffon,
6 if you would like to proceed, you may.

7 MR. GEFFON: Thank you, Judge. Judge, just by way
8 of procedural history with regard to the facts of the case
9 my client is charged, as you know, with one count of failing
10 to report an act of abuse as a mandatory reporter. The
11 facts are that in October of 2011 my client, who was the
12 principal at O.B. Whaley Elementary School, received a
13 complaint from a parent about a particular teacher. My
14 client after getting in contact with the district, conducted
15 an interview at the district's request of that child and
16 took notes during that interview. It was in that interview
17 that the information came forward that is now alleged she
18 should have realized was an act of abuse.

19 This is a very unique case in that the entirety of
20 the People's case are those three pages of notes. I can
21 explain to the Court and as an officer of the Court tell you
22 in speaking with Ms. Filo, the deputy district attorney
23 prosecuting this case, she's explained to me that
24 presentation of evidence and her case in evidence for this
25 case will take approximately two hours, and it will consist
26 of simply putting these three pages of notes in evidence and
27 explaining the context of how they were taken. This makes
28 up the entirety of the People's case. That puts us in a

1 very unique position I think with regard to the other cases
2 where a certain piece of evidence is being sought or a
3 certain report is being sought, but there's an entire case
4 otherwise that is not being sought to put in the public
5 record. If this motion to seal, as we are calling it, is
6 not granted, the entire case that the district attorney has
7 with regard to Ms. Vijayendren will appear in the newspaper
8 in the very not too distant future. That will undoubtedly
9 destroy my client's rights to a fair and impartial jury
10 because everyone will have read not just a piece of it, but
11 the entirety of the case against my client. That is the
12 overriding interest that the Court has to weigh in this
13 case.

14 As I've laid out in my original papers and having
15 mentioned in the motion to unseal as well, there are five
16 criteria to look at. There is no question there is a
17 overriding interest as my client's right to due process and
18 a fair and impartial jury. The overriding interest
19 certainly supports sealing of those records. A substantial
20 probability exists that her interest will be prejudiced if
21 these records are revealed, and that is because they are the
22 entirety of the case against her.

23 The next item, Judge, I think is important is
24 whether there are alternatives to these records, and I think
25 that's really where this case gets decided in my opinion.
26 And that is because the Mercury News does have and they have
27 attached it to their motion to unseal Exhibit B the entire
28 remainder of the police report, which this Court

1 specifically did not order sealed after looking at it. And
2 the reason why that is relevant is that report contains a
3 summary of what is contained in the notes. It contains the
4 information necessary to understand what happened in this
5 case, and the public's right to know certainly is taken care
6 of by seeing those reports and understanding the history of
7 what happened. There's no benefit to knowing the specific
8 words that were used during the interview when that makes up
9 the entire basis of the prosecution against my client. I
10 think because there are alternatives to these three pages of
11 notes being released and that a police report that is
12 significantly longer than three pages, to be honest I didn't
13 count it, but it's certainly 10 to 15 pages from my quick
14 count, and because all the information contained to
15 understand the notes is contained in the report, there's no
16 reason my client's right to a fair trial should be trampled
17 by allowing the only piece of evidence against her, and the
18 district attorney's entire case in chief should be placed in
19 the newspaper for every potential juror to read prior to the
20 case appearing in court. And for that reason I think the
21 court should make an amendment order, which would seal only
22 the pages of handwritten notes, and it would not seal
23 anything else, and allow access to the information necessary
24 for the public to understand this case, at the same time
25 protecting my client's right to a fair trial and to due
26 process.

27 THE COURT: Thank you. Mr. Madden do you want to
28 be heard insofar as this issue insofar as what may or may

1 not impact Mr. Chandler?

2 MR. MADDEN: I'm going to defer to Mr. Schumb on
3 this point.

4 MR. SCHUMB: Your Honor, if you are looking just
5 from the Vijayendren case, I think the only point that we
6 would make is that these notes were actually obtained in the
7 Chandler matter. They are part of the discovery in the
8 Chandler matter. They have not been used in court yet.
9 They were taken from that case by the DA used in this case,
10 and so they still exist in the Chandler case. They are
11 still discovery in the Chandler case, and if you grant this
12 motion and allow these notes to be seen, it would violate --
13 it would allow the Mercury News to discovery in the Chandler
14 case. I would submit, Your Honor, that's exactly what
15 happened here.

16 In this case the Mercury News didn't get the notes
17 on the Chandler case because they were not used in the
18 preliminary hearing. The district attorney made a decision
19 not to use them in the preliminary hearing. I know that
20 because I was there. The notes could not have been obtained
21 -- cannot be obtained in that case. The Mercury News wanted
22 them and so did a public records request to the district.
23 As part of that they then became aware as part of our
24 litigation that the notes had been sealed in this case, and
25 now they come and they've brought this motion after the
26 fact. So what we have here is they can't get the notes as
27 part of the Chandler discovery. They then try to get them
28 directly from the district, and now they have come here to

1 you. This is a back-handed way to get that discovery. So
2 for you to grant this motion then opens up the discovery in
3 the Chandler matter, and I would submit, Your Honor, that's
4 not the right of -- the Mercury News has no right to do
5 that, and the court's own rules do not allow, and, in fact,
6 mandate the sealing of a file when there are documents and
7 they are a part of the discovery. And so I believe I
8 asserted that in my initial brief in support of the writ.

9 THE COURT: Thank you.

10 MR. MADDEN: One moment, please, Your Honor.

11 MR. SCHUMB: Just to reiterate very quickly, Your
12 Honor, the bottom line is if you grant the motion in this
13 case, it's essentially granting a discovery motion for the
14 Mercury News' access to discovery in Chandler, and we don't
15 think the law allows for that. So that's a back-handed
16 attack literally on this motion and the reason why the Court
17 should seal.

18 THE COURT: If I didn't make it clear at the
19 beginning, the People through Ms. Filo are not present, and
20 have made clear they have no position or interest before the
21 Court.

22 MR. MADDEN: That's my understanding.

23 THE COURT: You may proceed.

24 MR. HUNTINGTON: Thank you, Your Honor. Let me
25 start off by saying that the public is entitled to
26 information regarding the investigation of a public
27 employee, and Mr. Geffon explained the exceptions to that or
28 the four steps outlined in the NBC case. However, I have to

1 strongly disagree with his analysis. With regard to the
2 prejudice probability, he has not provided any findings of
3 fact, and the case law is pretty clear, pretrial publicity
4 is not equal an unfair trial. He's got to provide specific
5 evidence, which he has not; he's simply providing
6 conclusionary statements saying if this information is
7 published, it's going to result in an unfair trial. And the
8 case law is clear that simply does not meet the standards of
9 sealing.

10 As we have shown in our papers the jury pool in
11 Santa Clara County, the sixth largest county in the State of
12 California, is substantial. There's no evidence that a
13 handful of articles in the Mercury News or other
14 publications is going to contaminate that entire jury pool.
15 Cases with far greater publicity, the Stainer case, the
16 Richard Allen Davis case were held and tried in Santa Clara
17 County, and if those cases don't meet the standard for
18 contamination, there's no reason that the Chandler case can.

19 With respect to other alternatives, I don't
20 believe there's any case law supporting that just because
21 we're relying on representation, we don't know for sure,
22 because we don't have the document, that the police report
23 provides an accurate summary. We don't know if that's true
24 or not, but I have no reason to doubt it either. That is
25 not an alternative that is set out in the case law. The
26 alternatives would be in jury voir dire, peremptory
27 challenges, assembling a larger than normal jury pool,
28 specific instructions or admonitions, postpone the trial, or

1 even a venue change, but saying that there's an alternative
2 document that provides a summary is not an alternative.

3 Finally with respect to Mr. Schumb's comments, you
4 know I disagree that we have attempted to get these notes on
5 Chandler. That's simply not true. With respect to that we
6 made some back-handed end around to get these notes is
7 simply not true, and there's no basis of fact. We were
8 reporting independently on the Vijayendren case. Our
9 reporters made a public records act in that case
10 specifically with regard to that case. To make it look --
11 to say this was a back-handed attempt to get something that
12 we attempted and failed to get in Chandler is absolutely not
13 true, and there's no basis for that.

14 THE COURT: Thank you. Want a last word?

15 MR. GEFFON: Just briefly, Judge.

16 THE COURT: Go ahead.

17 MR. GEFFON: I don't think it's necessary to have
18 finding of facts or studies to determine if someone would be
19 prejudice -- not just pretrial publicity -- we're not asking
20 the Mercury News that they can't write a story about this
21 case. We're talking about taking the entirety of the
22 district attorney's case and putting it in the newspaper.
23 That didn't happen on Cary Stainer; that didn't happen on
24 Richard Allen Davis. The entire case is contained in three
25 pages of handwritten notes and the amount of prejudice is
26 directly related to the percentage of the case that will
27 appear in the paper, and the percentage of the case that
28 will appear in the paper if this motion is not granted is

1 one hundred percent, and for that reason it's common sense
2 that the prejudice would exist.

3 I would submit to the Court there are obviously
4 reliable alternatives to these three pages of notes. There
5 is no basis to indicate or reason to believe the police
6 report is not accurate. This Court has the ability to
7 compare the three pages of notes with the report in case
8 there is any question about that. And I would point out
9 that part of the police report that the Mercury News does
10 have included in Exhibit B includes a statement, a summary
11 of the statement of my client. Basically, her side of the
12 story including the conversation she had with the student
13 are right there in the police report, and they have that
14 information. If there's any question about that accuracy,
15 this Court obviously can settle that.

16 So I think given there are reasonable
17 alternatives, given the amount of prejudice that would come
18 from these three pages of notes, the Court's order to seal
19 only those notes leaving everything else accessible to the
20 public and allow the Mercury News to write all the stories
21 that they feel are appropriate is an appropriate way to
22 balance the First Amendment and my client's Sixth Amendment
23 rights to due process and a fair trial.

24 THE COURT: Thank you. Mr. Schumb.

25 MR. SCHUMB: I'm not asserting that the Mercury
26 News was trying to get the documents in the Chandler
27 criminal case. It's just that you didn't try to get them
28 from the district because you couldn't get them in the

1 criminal case, there's no basis for it. So when you tried
2 to do the public records request and met a roadblock, now
3 you came over here. So that's the back-handed nature of it.

4 The other thing I will say, Your Honor, is the
5 consolidated matter you have here in our writ case has all
6 the statistics about the Mercury's circulation and the jury
7 pool. I think there's quite good evidence on the record
8 that writing six or seven articles or even one article could
9 affect a good part of the jury pool.

10 And the final thing is that in this case the notes
11 will be made public. There is not an issue of if; it's
12 when. All we're talking about is a scoop. They are just
13 going to have them before everybody else will. Everybody
14 will get them at the trial, and I think the only reason we
15 are here is they want them just before everybody else can
16 get them. Because they are coming out; it's a matter of
17 when.

18 THE COURT: You want to respond?

19 MR. HUNTINGTON: I'm just confused by Mr. Schumb's
20 statement. We're not here because of the writ petition;
21 we're here because there is a motion to seal. That's the
22 only reason we are here. The fact that this is a key piece
23 of evidence or the only key piece of evidence is really
24 irrelevant. There's no case law that simply says because
25 the document pertains to key evidence it should somehow be
26 sealed.

27 Finally, what Mr. Geffon is saying is that the
28 police report contains an accurate summary, then I don't see

1 what the prejudice is in unsealing the document.

2 That is all. Thank you.

3 THE COURT: And I have a of couple questions. Let
4 me start with you, Mr. Geffon. Let's start with the last
5 one and work backwards because counsel raises a point that I
6 have been juggling, which is the current affidavit of
7 probable cause has got all this. It's already out there.
8 We are not -- the Court is not sanctioning the release of
9 information that is apparently not already out in the packet
10 of available materials. How does releasing the notes above
11 and beyond an accurate summary thereof prejudice the
12 defendant's right to a fair trial?

13 MR. GEFFON: Because, Judge, as the Court knows
14 from looking at both the report and the notes while the
15 report summarizes that there was an interview and the fact
16 there was interview taken of the child, this case rises and
17 falls on the very specific facts that were told to
18 Ms. Vijayendren during that interview, and whether those
19 very specific facts would lead a reasonable person to
20 believe that there was an act of abuse being reported.

21 I will tell the Court, I think the Court knows
22 from reviewing both, that while the report is, I believe, an
23 accurate summary of the interview, there are more details in
24 those three pages of handwritten notes than exist in the
25 police report. The context is there, but the very specific
26 words that were used, the very specific actions that were
27 reported, those are contained in the three page handwritten
28 notes, and those are the words or the evidence against my

1 client.

2 THE COURT: Well, let me ask you this also,
3 because I have not read the preliminary examination
4 transcript in the Chandler case, and I'm certainly no Mr.
5 Schumb and Mr. Madden and I don't know what you have as part
6 of your case, but the minor testified at the prelim;
7 correct?

8 MR. GEFFON: She did testify at the prelim.

9 THE COURT: Is the information not contained
10 within that transcript? I don't mean the notes. I mean the
11 contents, the sum and substance of what we're talking about?

12 MR. SCHUMB: If I may address that, Your Honor. I
13 believe that's in my declaration. No, she didn't, and there
14 are, in fact, some very, very material omissions. The
15 district attorney did not try to refresh her recollection
16 with it or use the notes in any other way or exam in a
17 formal fashion and that's why there's one reason there's
18 going to be a prejudice that is going to attend to
19 Mr. Chandler. These are allegations that have not been used
20 in the preliminary hearing. They could serve as a basis for
21 criminal charges. They may never be used. The DA may not
22 try to elicit, did not try to use the notes to refresh her
23 recollection, and therefore, they are uncharged allegations
24 at this point to the extent that they haven't been a basis
25 for the holding that is currently against him. So that's
26 our great concern, obviously, in the criminal case is that
27 these allegations are going to be made public, and are not
28 currently a basis for the charges, and they may never be,

1 and that could truly taint the jury pool against him. And I
2 think Your Honor knows how subtle something such as news
3 article can be. I also think the fact that the notes are
4 purported to be handwritten notes give greater credibility
5 to a news story to the folks who are reading it, and we
6 think this is so. And they may not be true. The
7 allegations made by the alleged victim, you know, may be
8 untrue. So, again, we expect Mr. Chandler to be concerned
9 about the fact that that would happen. Thank you.

10 Any more questions?

11 THE COURT: Yes. You may be seated. I want to
12 check something for a moment. I want to clarify because
13 maybe I misheard or misread or misunderstood. Is not the
14 minor, the student, who was the subject of the notes,
15 testified at the prelim, and is a charged complaining
16 witness in your case?

17 MR. MADDEN: Yes.

18 THE COURT: I thought I heard you say were
19 uncharged.

20 MR. SCHUMB: What I said was the allegations that
21 she omitted.

22 MR. MADDEN: Let me respond. The child we are
23 talking about is the complaining witness in Count 2 of the
24 then Complaint and Information. I have reviewed the
25 preliminary examination at length, and although I don't have
26 it with me, I can tell you that I agree with Mr. Schumb that
27 the direct substance of the contents of those notes were
28 never presented to her in the form of questions, never

1 presented to her in the form of asking her to refresh her
2 recollection. They were not used for any purpose by the
3 prosecution, and Mr. Schumb certainly did not ask about
4 them.

5 THE COURT: No, I understand that. I was just
6 trying to clarify that the complaining witness was examined
7 and testified as to the sum and substance of the conduct
8 alleged against Mr. Chandler vis-a-vis her, and that was the
9 discussion between her and Mr. Geffon's client contained
10 within those notes. That is, the interaction with
11 Mr. Chandler she testified to at the prelim. She was not
12 questioned about her statement to Mr. Geffon's client as
13 shown in the notes.

14 MR. MADDEN: It's more than that. I think to put
15 it in perspective, I think I would be accurate in stating
16 that her testimony at the preliminary examination was not in
17 anyway near as inclusive as it was on earlier occasions.

18 THE COURT: Again, I'm sorry. I'm not suggesting
19 that her testimony at the prelim mirrored the statement made
20 to the principal. May not. All I was saying is just I
21 wanted to be clear that this 40 pages refers to an interview
22 given by a student to Mr. Geffon's client relative to the
23 alleged conduct of Mr. Chandler as reflected in the counts
24 in the Information that is charged against him vis-a-vis
25 her, and she was examined regarding the sum and substance of
26 that allegation or those allegations at the prelim.

27 MR. MADDEN: I'm comfortable with your emphasis on
28 the allegation.

1 THE COURT: I mean, that's true. She's the
2 alleged victim.

3 MR. MADDEN: Yes, that is true.

4 THE COURT: I just wanted to be clear if it wasn't
5 an uncharged incident -- he's charged with it --

6 MR. MADDEN: That's correct.

7 THE COURT: She can testify at the prelim. She
8 was questioned about the sum and substance of the
9 allegations on direct and cross?

10 MR. MADDEN: She was questioned about the
11 allegations.

12 THE COURT: And the notes were not used. She
13 wasn't impeached with her statements or otherwise, but her
14 allegations were a matter of public record.

15 MR. MADDEN: Yes, but I might further add that she
16 was never questioned about her conversation with Ms.
17 Vijayendren.

18 THE COURT: I think all the prelim suggests is
19 that she acknowledged that she had a conversation that is in
20 the record. I just wanted to be clear because I was hearing
21 that that was not a currently charged allegation against
22 Mr. Chandler, hence, I misspoke.

23 MR. SCHUMB: I just misspoke, Your Honor.

24 THE COURT: No problem. Mr. Geffon, putting you
25 back on the hot seat.

26 MR. GEFFON: Yes, Judge.

27 THE COURT: The idea that the three pages as it
28 were is, quote, the sum and substance of the case or the

1 entirety of the case, it is not unusual that, particularly
2 in the case of a misdemeanor and in a number of felonies,
3 that the entirety of the People's case is going to be in the
4 affidavit of probable cause. A residential burglary is
5 going to have the police report affidavit, is going to have
6 the reporting of a theft, the items that were stolen, if it
7 was a case that was solved by fingerprints, the fact that
8 fingerprints were taken and identified, and that's the case.
9 So the fact that the entirety of the case is contained in
10 your mind in the three pages, how other than your darn good
11 faith belief based on your experience, how does that lead me
12 to the conclusion that her rights to fair trial are going to
13 be substantially impaired.

14 MR. GEFFON: Because it's a difference between a
15 summary of an entire case as you described, the affidavit of
16 probable cause would be the report about fingerprints, a
17 statement that there was a certain address burglarized, and
18 the fact that in this case the handwritten notes are a
19 physical piece of evidence. They will be marked and
20 admitted as constituted and that is different than a
21 affidavit of probable cause. This is Exhibit Number 1 for
22 the People. It is the only exhibit they will mark in the
23 case, and they will rest once that exhibit is admitted. And
24 that's different than a summary of the evidence, which is
25 what we normally see in an affidavit of probable cause, and
26 I would submit that it is even in a misdemeanor case unusual
27 that a single piece of evidence makes the entire case, and
28 what makes this case unique and what makes the prejudice so

1 great for Ms. Vijayendren is this isn't just a question of
2 what house was burglarized and what's the address, and what
3 was taken, but the ultimate question for the jury in this
4 case will be how did a reasonable person and how did
5 Ms. Vijayendren interpret the information that was given to
6 her. If these notes are put out to the public, then that
7 decision is made by people before they come to court. It is
8 the crux of the case, and it is basically tried in the court
9 of public opinion rather than the court of law, and the
10 reason that it is being tried there is that everything the
11 jury needs to make that decision will be printed in the
12 newspaper. Not part of it, not a summary of it, not a list
13 of things that they found, but the actual piece of evidence
14 that will be used to make a decision will be in the
15 newspaper. And that's what makes a difference from a case
16 that has a summary or indication of evidence and what the
17 evidence may show. That's the overriding difference. It's
18 a piece of evidence and it's the only evidence in the case.

19 I want to confer with Mr. Madden apparently.

20 THE COURT: No, no, fine. Anymore you want to add
21 on that point?

22 MR. GEFFON: No. I think we are okay on that
23 point, Your Honor.

24 THE COURT: Counsel, do you want to add anything
25 on the point I was discussing with them? You don't have to
26 repeat everything we've already said. If there's anything
27 you want to weigh in on, feel free.

28 MR. HUNTINGTON: I don't hold myself out to be a

1 criminal attorney, but I have to think there has got to be
2 other evidence used at trial other than a simple document.

3 THE COURT: Interestingly enough, it may not be in
4 this case, but that's not necessarily the ultimate
5 controlling point.

6 Matter submitted?

7 MR. GEFFON: Submitted.

8 MR. MADDEN: Submitted, Your Honor.

9 MR. HUNTINGTON: Submitted, yes.

10 THE COURT: The Court is very mindful in its 33
11 years of experience in the criminal justice system in Santa
12 Clara County of the significant constitutional rights that
13 are at issue here. And when I say first, it doesn't mean
14 it's paramount, it's just that it's first in order, is the
15 First Amendment right of access, as well as the Sixth
16 Amendment right of the defendant to get a fair trial. And
17 it is not the least bit surprising that in many a case these
18 rights come in conflict. And it becomes the duty of the
19 Court to give value to both of those rights within the
20 framework and parameters set forth in the law to secure the
21 fair exercise of those rights. There are certain factors
22 here in making a full and complete record that are of value
23 or importance to the Court.

24 Number one, the information contained within the
25 three pages of notes, the sum and substance of it, is
26 currently in the public record. It is in the public record
27 in the balance of the affidavit of probable cause that has
28 been filed in the Vijayendren case. It is before the

1 Court -- strike that. It is in the public record through
2 the testimony at the preliminary examination of Mr. Chandler
3 by the minor who was the subject of the interview contained
4 within the notes. To be clear what is in the public record
5 is not a verbatim outline of the interview. As has been
6 accurately portrayed, those three pages of the notes played
7 no role in the preliminary examination. The document was
8 neither used to refresh the witness's recollection nor was
9 it used to impeach the witness. It played no role in the
10 preliminary examination, and as counsel has noted it is part
11 of, apparently, the discovery provided in that case.

12 The fact that the affidavit of probable cause in
13 the misdemeanor case contains a summary as opposed to
14 verbatim is not a distinction of tremendous importance or
15 value to the Court. The fact that the three pages of notes
16 reference details that are not necessarily contained within
17 the summary or are not consistent with the testimony at the
18 preliminary examination, doesn't change the Court's
19 conclusion that the sum and substance of the notes are in,
20 fact, currently in the public record, and the Court thinks
21 that is an important factor.

22 As to the idea that these notes somehow constitute
23 the entire evidentiary basis for the prosecution in the
24 misdemeanor case, the Court does not challenge or question
25 counsel's interpretation or argument of that, or the
26 representation of what the People's intentions are as to how
27 they intend to prosecute the case. I will accept that's
28 true because to make a prima facie showing I suppose isn't

1 going to require much more than laying a foundation for
2 those notes and admitting them, because the truth or
3 falseness of the allegations is undoubtedly not an issue for
4 the misdemeanor trial; that has nothing to do with it. The
5 allegations could be totally fabricated. The issues
6 vis-a-vis Ms. Vijayendren are going to be, having received
7 that information as Mr. Geffon stated, how should she have
8 responded or did she respond in an appropriate or not in an
9 appropriate way. So you are right, it's a very
10 straightforward case.

11 with the totality of the record that we have, is
12 there a possibility that the defendant's right to a fair
13 trial could be prejudiced if that information, meaning those
14 notes, came into the public record? And I suppose the
15 answer is yes. That's not the standard, and that's what I'm
16 going to have to get to. Is the defendant's right to a fair
17 trial an overriding interest that may overcome the right of
18 public access? By law, absolutely, and the Court has no
19 quarrel with it. Has it been shown that there is a
20 substantial probability that the defendant's right to a fair
21 trial will be prejudiced if the record is not sealed? I
22 accept counsel's good faith belief that that's true. I'm
23 not convinced that evidentially and factually I would make
24 that finding. I think there is a possibility. I don't
25 think it rises to the level of a substantial probability
26 when we take it in the context of all that is already in the
27 record and remains out of the record at this point.

28 Additionally, I think I'm challenged to say that

1 there aren't less restrictive means to protect the
2 defendant's right to a fair trial short of sealing those
3 three pages. Jury selection may be significantly more
4 difficult. Voir dire may go on for a longer time. It may
5 take a larger panel of jurors than normal. I seriously
6 doubt, at least on my experience, that ultimately -- I won't
7 put a double negative. I am confident that with appropriate
8 work by the Court and appropriate work by counsel that a
9 fair jury will be able to be impaneled for the fair trial
10 rights of both defendant and the People. And I will expect
11 that a learned trial judge will give all appropriate
12 deference to counsel in conducting appropriate voir dire,
13 recognizing that to the extent there is more publicity in
14 this case than there is in the typical misdemeanor, that
15 more extensive voir dire may be necessary. I think it
16 should be allowed, and I think ultimately you will be able
17 to find 12 jurors that have not prejudged the issues in this
18 case. To the extent there are jurors or potential jurors
19 who may do so, undoubtedly, have already started that
20 process with the matters in the public record that have
21 already been published, and there's been nothing that has
22 been published so far that would in the Court's view
23 challenge the conclusion that fair jurors could not be
24 found. I am also confident that to the extent the Court
25 unseals these notes that those in the media who have
26 interest, including and beyond those before the Court here,
27 that they are going to report the matter and handle those in
28 a responsible manner, because certainly it is in their

1 interests to see that all parties before the Court have
2 their fair trial rights protected, and that in their
3 reporting the news, which is their right and responsibility,
4 they do so in an appropriate way. So that courts down the
5 road, including this Court, won't rue the day they did what
6 they did. And I have confidence within the parameters of
7 this case that that is going to happen. I have a good
8 relationship, as I say to the lawyers, with the jail. I
9 never tell them how to run the jail, and they don't tell
10 me how to run the court. And I just assume that the media
11 handles the matter responsibly as they should, and I have
12 every confidence that they will to do. To the extent that
13 it's a motion to seal it is denied. Therefore, madam clerk,
14 we need to unseal the sealed portion and return to the
15 affidavit of probable cause. Any issue?

16 MR. SCHUMB: Your Honor, are you going to address
17 the impact on Mr. Chandler?

18 THE COURT: By implication I think I did, but I
19 will again. To the extent, again, all matters in the
20 Court's view that have been in the public record from the
21 extent of the affidavit of probable cause and the
22 misdemeanor case and the transcript of the preliminary
23 examination, I'm not satisfied that there are sufficient
24 factual or legal bases to find that there is a substantial
25 probability that his ability to get a fair trial is
26 impaired. And I am satisfied in the context, again, that
27 less restrictive means short of sealing would be
28 appropriate, with appropriate voir dire, appropriate work by

1 the trial judge, and whatever other legal steps are
2 necessary to protect his rights to a fair trial. In that
3 regard the findings in this Court's view are similar to
4 Mr. Chandler as to Ms. Vijayendren.

5 MR. SCHUMB: Is there a finding under the writ
6 action?

7 THE COURT: No, I haven't gotten to the writ yet.
8 That's a whole different keg of worms, as it were. That's
9 why I was trying to move along sequentially.

10 To the extent the only issue was those three pages
11 then this probably would have mooted out the writ. The
12 issue I suppose now is, and I guess we will jump right into
13 it, the issue becomes the remaining matters that the Court
14 has been made aware of that the school district is prepared
15 to release, and how you all are asking me to address that in
16 the writ. This ruling is to the extent the analysis will
17 apply in part to the writ. The analysis I made and the
18 ruling I've made has been particularly as to those three
19 pages. I have not ruled on the balance of matters, and I'm
20 happy to address that and I'll rule all the parties can
21 present it. You want a few minutes to figure out where you
22 are?

23 MR. SCHUMB: The only issue is there are separate
24 statutory grounds under the writ with respect to the
25 Vijayendren notes; one of which was raised the fact that is
26 currently the subject of pending litigation between the
27 district and these parties, and, you know, on the grounds of
28 K, 6254 K being alleged has to do with the Sixth Amendment

1 rights. There's a couple other grounds. Do you want to
2 stay releasing the notes for five days while you look at
3 those as well? Could we maybe get some briefs on file, say,
4 Tuesday and come back next Friday? I don't want to --
5 obviously, I see where you are going, but I would like to at
6 least have an opportunity to be sure that you've looked at
7 the statutory bases that we are operating under, and give us
8 an opportunity to look at any other remedies we might seek.

9 MR. HUNTINGTON: I mean, I don't want to open up
10 for further delay. It would be pending grounds for a ruling
11 on the motion to unseal and give an opportunity for all
12 sides if there is an expectation we will receive further
13 briefing on this issue, I don't see it as the basis for
14 further delay for the release of the three pages.

15 MR. SCHUMB: It's my understanding, Judge, in
16 ruling on this issue you also are ruling on the issue as to
17 all the arguments raised in the writ, and I just want to
18 make sure that kind --

19 THE COURT: Let me have a minute.

20 MR. MADDEN: Your Honor, may we be excused for a
21 few minutes?

22 THE COURT: We will consider ourselves in a brief
23 recess, and I'll just be right here.

24 (Recess.)

25 THE COURT: Let's go back on the record briefly.
26 Insofar as the three pages of notes, let it be noted that
27 the Court has reflected on those insofar as the writ
28 application, and the points and authorities filed and

1 additional statutory protection sought. And for all the
2 reasons noted in the prior ruling, the application for the
3 writ is denied as to the three pages of notes only.

4 MR. SCHUMB: Might I address those grounds
5 briefly?

6 THE COURT: Sure.

7 MR. SCHUMB: The new one, Judge, is B because we
8 didn't amend the writ.

9 THE COURT: It's all in your pleadings, but go
10 ahead.

11 MR. SCHUMB: It's not in the writ because we
12 didn't know about some of these things.

13 THE COURT: I thought B was in there?

14 MR. SCHUMB: I don't think B is. K is in the
15 writ. So K is basically if there was a statute or ruling K
16 was Sixth Amendment. I think you addressed that. However,
17 B, is whether there is a law suit pending, and since the
18 filing of the writ two civil lawsuits have been filed
19 against the District naming, we believe, my client and
20 Ms. Vijayendren. So there's now a separate civil lawsuit
21 pending, and obviously these notes are very relevant in that
22 litigation. So there is a ground under B, which is pretty
23 unconditional, the record pertaining to the pending
24 litigation to which a public entity is a party. So we got a
25 claim filed; litigation is pending in my opinion.

26 THE COURT: So what's been filed is a claim for
27 damages with a public entity?

28 MR. SCHUMB: Correct. And we have a copy of that.

1 And the other one is F, and this kind of gets to the heart
2 of Mr. Chandler's position here. Mr. Chandler is the
3 unintended victim of the way the DA put documents in the
4 Vijayendren case. These are investigatory records in a
5 pending criminal action. This could go the other way. One
6 of these days, the Mercury could send a public request to
7 the coroner or some other public entity and say, hey, we
8 want to see some of these reports, or some other public
9 entity involved in some other kind of criminal case. And
10 even though those are records that are relevant in the
11 criminal case, who knows might be pre-charging. It might be
12 during the pendency of the verdict or during the pendency of
13 the case, and say, hey, we want to get these records, or the
14 DA or the defendant could have an issue with it. And that's
15 what's happened here. So these are records in
16 Mr. Chandler's case. They haven't been used yet. They may
17 never be used. They contain allegations which have never
18 been made public. That's an important issue. There's a big
19 difference between what's in the preliminary hearing
20 transcript, what's in the notes, and what's in
21 Ms. Vijayendren's notes. Very significant differences. And
22 who knows, this could dissuade a witness from wanting to
23 testify. I mean if the notes and the testimony of the
24 alleged victim were compared, one newspaper, I'm not sure
25 the Mercury could say, gee whiz, this point towards
26 innocence. And it could dissuade the witness from
27 testifying. Who knows? I don't know how they are going to
28 be used. So what we really have is and the position I took

1 is that once these records are part of the investigative
2 file under F, it seems like they get a special place. All
3 we're asking for, and this is using the balancing test under
4 6455, was, hey, it's a much simpler balancing test than NBC.
5 It's, hey, what's the balancing of the rights and is there
6 an alternative? well, the public is going to get these
7 notes. This is not an issue that somehow there's some
8 information or allegations that the public will never know
9 of. It's just a matter of when. And if you allow, Your
10 Honor, the Mercury News to circumvent the discovery statutes
11 that prohibit anyone from the public from getting these
12 documents, well, you know, a defendant is going to file a
13 public records request. well, who knows how this could be
14 used or abused. So it seems to me that F in the reply brief
15 from the Mercury they dismissed it saying, hey, you know,
16 the school district is not an investigative agency, but the
17 point that we are making is these are in possession of the
18 DA's office in the Chandler case, so I really think this
19 particular ground deserves some close scrutiny by the Court,
20 if it's had a chance to look at it. I just think that once
21 this door gets open, it could work in many ways, and,
22 obviously, we have the Mercury News here, but standing in no
23 special position than anyone else; just another person. So
24 the defendant could do the exact same thing, right, and get
25 confidential stuff that's part of an investigative report
26 that may not have been provided to them. A victim, a third
27 party, could be a gang case, and when you start to think
28 about the implications of that, Your Honor, what if the City

1 of San Jose has stuff that it's got from a gang prosecution,
2 and they do a public record request of that? I think this
3 has much broader implications, and I guess my point is that
4 I don't think you can -- and the reason it's all here
5 together, I don't think you can pull apart what's happening
6 in this case, Chandler's case, or the writ case; it's all
7 one thing. And if you do that and you start to allow people
8 to go and pluck documents they become aware of in the
9 investigative files of the DA, police department, or anybody
10 else, that could work as severe injustice. I think it's a
11 bad precedent, and it's not justified in this case because
12 they are going to get the information. I think the
13 arguments that you make about, well, this stuff is already
14 in the public record; well, some of it is. We are worried
15 about the part that is not. We don't care about what's in
16 the record; we've already said that. We're worried about
17 the part that is not. That is significant. I wish I could
18 go through the transcript.

19 THE COURT: I appreciate there is obviously some
20 difference what's in the three pages of notes versus what's
21 in the police report, and what's in the preliminary
22 examination transcript. I understand that. And I guess,
23 you are right, it all should be heard together, but I guess
24 the question is does the statutory remedy in the government
25 code override the constitutional rights?

26 MR. SCHUMB: Well, but, remember, they are not
27 constitutional rights. This is the government code and
28 that's made very clear in the case law we cited, and that's

1 why this isn't a prior restraint; they don't have them yet.

2 THE COURT: You never heard that phrase coming
3 from me. It's not a prior restraint case.

4 I guess my question is this. If they have
5 lawfully, and I guess that's a matter of interpretation,
6 sought information in different ways, and in one way
7 constitutionally they are entitled to it, and arguably in
8 another way they are statutorily not, it's your position
9 that the statute overrides?

10 MR. SCHUMB: I think I got them, and I will tell
11 you why. Here's why I got them. If they are not allowed to
12 get these documents because they are part of the DA's file
13 and they are part of an investigative record in a pending
14 case. Then that precedent comes through K, 6455K, that
15 says, "Another important right or action pending." The
16 government code built in a protection that you couldn't
17 circumvent what another agency or entity is doing by using
18 the public record request, and that's why it exempts the
19 litigation in B.

20 THE COURT: Now, you are comparing two statutes,
21 but what about through the Vijayendren file and the weighing
22 and the balancing on the constitutional right I did?

23 MR. SCHUMB: Because I catch them with K. I catch
24 them with 6455 K, because what you can find, Your Honor, is
25 that Vijayendren, I believe the disclosure in that case
26 works to violate the constitutional rights of another, as I
27 think it does with Mr. Chandler and/or the DA's files, then
28 I think you have good cause under the Vijayendren balancing

1 because it's not just about her anymore, it's about
2 Chandler, which is why we are here, and the DA's files, and
3 that's what creates, I think, a weighing in favor of the
4 defendant, and, more importantly, the constitutional rights,
5 the Sixth Amendment right. So that's why we are all here is
6 that you are supposed to put all this in the mixer. When
7 you are looking at Vijayendren, my expectation is you are
8 going to look at Chandler and that's what the writ does. I
9 pull you back into my problem here. You can see under F
10 this could have some real serious implications. We're not a
11 party in Vijayendren. So that creates a huge problem, and
12 that's why F, which is their basis under the CPRA to get
13 these documents, and it works an injustice.

14 THE COURT: Here your record is as complete as it
15 can be, hopefully, in this. I am juggling those statutory
16 rules in 6254 with the constitutional rights. Now, in a
17 vacuum, which I know we are not, but let's just say that in
18 the misdemeanor case those three pages weren't in the
19 affidavit, and the only thing I had in front of me was their
20 filing the action with the district to get them, and we have
21 your writ. Now, I'm looking at a straight -- I'm looking at
22 the statutes, and I'm ruling based on the statutes. But now
23 I've got this other thing, and they have made a --
24 reasonable minds will differ -- reasonable request that the
25 matters in the -- that they have access to the affidavit of
26 probable cause, and his counsel with your able assistance or
27 her counsel with your able assistance has sought to have
28 that sealed, and I get into that constitutional balance, and

1 I ruled on the constitutional balance. And no matter what I
2 think as to the government code is that going to override
3 the constitutional determination I already made?

4 MR. SCHUMB: The point I'm trying to make is you
5 got two people both who have constitutional rights. It
6 seems to me like if your action violates one of their
7 constitution rights, you can't allow it to happen on behalf
8 of the other person. That's the balancing. And maybe
9 that's where we disagree.

10 THE COURT: I think I found against Mr. Geffon's
11 client on the constitutional issue, and I found against your
12 client on the constitutional issue. You are raising the
13 statutory issue in your writ.

14 MR. SCHUMB: Right.

15 THE COURT: And my question is, accepting the
16 merits of the argument by statute, is that going to override
17 the constitutional rulings I've already made?

18 MR. SCHUMB: The statutory findings are there to
19 protect the government processes, such as the operation of
20 the district attorney's office. It seems to me as though
21 that is exactly the overriding governmental interest that
22 does justify not turning over the notes in the Vijayendren
23 case.

24 THE COURT: Except in this case the DA filed the
25 notes as part of their affidavit of probable cause.

26 MR. SCHUMB: But that's random. The point is, see
27 -- what my point is in my papers is that once the notes are
28 protected, because they protect an important governmental

1 interest, which is constitutional, right? The DA's
2 operation and public safety is part of the government
3 interest. Once that right is created in that document, you
4 can't then go over and have it -- ignore it when you are
5 dealing with another situation such as Vijayendren. So it
6 qualifies or colors the documents such that when you get to
7 the Vijayendren decision, you say to yourself, okay, I've
8 got other important constitutional and statutory rights over
9 here that outweigh the disclosure of the documents that will
10 be frustrated if I disclose in Vijayendren, and, therefore,
11 the balancing I make is not now.

12 THE COURT: Except, of course, they are not here
13 screaming for that. They are not claiming any challenge
14 rights. It is understandably coming from you and Mr.
15 Geffon. In other words, the investigating agency has no
16 problem with this information getting out.

17 MR. SCHUMB: why do you think that is? why do you
18 think those notes happen to just be in this other file?
19 They couldn't be in the Chandler file because they never put
20 allegations of child abuse in a felony file. Those are
21 always sealed in a little protective envelope, but here we
22 find them just flopping around attached to this misdemeanor
23 file, and that's what really worries me, Judge, is that the
24 DA can selectively just sprinkle this stuff out here, all to
25 the detriment of another criminal defendant. That's really
26 the problem, really, was their decision to attach those
27 notes, which was very unmindful of what's happening in the
28 Chandler case. They couldn't and wouldn't do it in the

1 Chandler case. Why they did it in that case, I don't know.
2 We had the same problem in the Chandler case. If you look
3 at the file, they attached the file in the Chandler case and
4 we had to do a motion in front of Judge Pennypacker to get
5 that sealed, but if I'm arguing against the wind, I will
6 hush up.

7 THE COURT: I don't want you to feel that way,
8 because I've tried, if nothing else, to convey my sincere
9 belief and understanding of the issues and the concerns.
10 I'm not unmindful of them. I appreciate the significant
11 interest to the defendant in a criminal case. I am not
12 unmindful of those at all, and I tried to balance them as
13 best I can.

14 What I'm going to do at this point is this. The
15 writ insofar as it applies to the three pages is denied, and
16 I'm not overly civilly worldly. There was a peremptory
17 order made by Judge Pierce, and I don't know if that by its
18 own terms expires. It's technically expiring based on my
19 ruling, so I'm denying the writ as to that.

20 I will do the following. Number one, I will give
21 the opportunity to further brief, if you want, the issue as
22 to the remaining matters in the first and second
23 supplemental statements from the district.

24 MR. SCHUMB: Thank you, Your Honor.

25 THE COURT: Number two, I'm going to invite,
26 unless there is an objection and unless I hear it, I'm going
27 to invite them to leave all those documents with me or
28 copies of them so I can review them in camera before our

1 next meeting. You've more than made your record. I'm going
2 to stay the order I've made today until Wednesday, October
3 3rd at 5:00 p.m. Actually, that's not fair because nothing
4 can happen at 5:00 p.m. It will be Thursday, October 4th at
5 8:00 a.m. Unless there has been some stay granted, then
6 those three pages will be back in the affidavit of probable
7 cause Thursday morning at 8:00.

8 Now, I don't know what you guys have discussed
9 scheduling-wise. If we are going to continue this it's
10 going to be on a very short schedule. My schedule is
11 impacted also, which we haven't discussed. I'm going to be
12 right here all next week. It's a short week. The week
13 thereafter I'm going to be in Morgan Hill, where I'm happy
14 to have you all join me. Then I'm going to be away for the
15 rest of the month of October. So I'm on a short schedule.
16 I'm happy to keep this on a short schedule. I'd be thrilled
17 to have something on file, at least with a copy to the Court
18 and to counsel by Monday afternoon late.

19 MR. SCHUMB: How about Monday, October 1st?

20 THE COURT: Yes, and then have you all back here
21 next Friday afternoon -- actually, I'm going to say in the
22 morning late because I have calendars.

23 MR. MADDEN: I have conflicts both in the morning
24 and afternoon next Friday. The Friday after I'm totally
25 available.

26 MR. SCHUMB: I've a Goodwill Board retreat that
27 day.

28 THE COURT: Next Friday.

1 MR. SCHUMB: The 5th. I'd like a little more
2 time.

3 MR. HUNTINGTON: Your Honor, before you begin the
4 scheduling, I'm really confused.

5 THE COURT: Good. I've accomplished something.

6 MR. HUNTINGTON: I'm unclear as to what the basis
7 is for staying your order till next week if the writ has
8 been denied.

9 THE COURT: The writ has been denied. I'm giving
10 them, because, obviously, once the matters are back in the
11 file, they are a matter of open record. I am satisfied that
12 I have tried to address appropriately significant
13 constitutional issues on both sides. I am allowing them a
14 very small window of opportunity if they wish to seek higher
15 review, and if they do, so be it, and if they don't, so be
16 it. If the Court of Appeal determines that my orders should
17 be stayed while they review it, that's fine, and if they
18 choose not to, then Thursday morning you are going to come,
19 the representatives are going to be at the front desk, and
20 it will be in the court file.

21 MR. HUNTINGTON: If they appeal as opposed to
22 additional briefing?

23 THE COURT: No. My ruling is final. It was just
24 to give them a chance if they want to seek a higher ruling.

25 MR. SCHUMB: Under the rest of the documents the
26 writ is stayed, left in effect until the next hearing date?

27 THE COURT: I have not ruled on the writ. Only
28 the three pages, that's all I've ruled on today.

1 MR. SCHUMB: So the stay is lifted only for the
2 three pages and we will continue on for hearing for the
3 other. Your Honor, can we pick that date?

4 THE COURT: Yes. You bet.

5 MR. FISS: The stay of the order till October 4th,
6 is that with respect to only the three pages being place
7 back into the file or does that also relate to the district
8 producing the documents in response?

9 THE COURT: That also relates to the latter, to
10 the district producing those three pages next Thursday,
11 October 4th 8:00 a.m.

12 MR. FISS: And then my second question there are
13 three pages of typed notes and three pages of handwritten
14 notes. Does this order apply to both the typed and
15 handwritten notes?

16 THE COURT: You are just going to help me. Is the
17 typed version just a typed version of the handwritten?

18 MR. FISS: They are subsequently the same.

19 MR. GEFFON: Judge, I can tell the Court what
20 happened. The handwritten notes were made
21 contemporaneously. In October, three months later when
22 Mr. Chandler was arrested, my client was asked to type up
23 her memory of the October incident, which includes details
24 of the interview, but she did that without the handwritten
25 notes and from her memory. So they are covering the same
26 subject, and I don't think there are any inconsistencies but
27 they are not just a typed version of the interview notes.

28 THE COURT: Yes, they are included in the Court's

1 ruling.

2 MR. FISS: So both will be produced?

3 MR. GEFFON: The Court is ordering on October 4th
4 both the handwritten notes and the typed summary of events
5 made three months later is also being released?

6 THE COURT: Yes. Let's look at when we are going
7 to come back, and then we will figure out when I need to see
8 whatever I'm going to see. The morning of Wednesday,
9 October 10th.

10 MR. SCHUMB: What time.

11 THE COURT: 9:00 in the rarefied air of Morgan
12 Hill, Department 105.

13 MR. MADDEN: That's fine.

14 MR. SCHUMB: Can I get any supplemental papers
15 filed on October 4th?

16 THE COURT: Yes.

17 MR. SCHUMB: I will serve those by e-mail.

18 THE COURT: I will give you an e-mail too.

19 October 10, 9:00, Department 105 in the morning, Morgan Hill
20 Mr. Huntington will prepare the order. The original should
21 be filed with the Court, but I will be happy to accept the
22 e-mail. If you want 72 hours to file a response, you may.

23 MR. HUNTINGTON: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 (Recess.)

26

27 THE COURT: Note on the record. The records were
28 submitted to the Court regarding the writs for in camera

1 review regarding the writ.

2 (Recess.)

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2 STATE OF CALIFORNIA }
3 COUNTY OF SANTA CLARA } ss.
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5 I, BARBEE MACHADO, Official Reporter of the County of
6 Santa Clara, State of California, do hereby certify that the
7 foregoing pages, 251-291, comprise a full, true and correct
8 transcription of my stenographic notes in the aforementioned
9 case of the proceedings held on September 28, 2012.

10
11 I further certify that I have complied with CCP
12 237(A)(2) in that all personal identifying information has
13 been redacted, if applicable.
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17 Dated this 22nd day of January, 2014
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22 BARBEE MACHADO, CSR 9355
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EXHIBIT 3

(Vol. 3)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

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PAGES 401 - 441

JUNE 11, 2013

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REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SANTA CLARA
 3 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
 4 DEPARTMENT NO. 37

5 ---o0o---

7 THE PEOPLE OF THE
 8 STATE OF CALIFORNIA,)
 9 PLAINTIFF,) CASE NO. C1223754
 10 v.)
 11 CRAIG RICHARD CHANDLER,)
 12 DEFENDANT.)
 13 _____ /

14 ---o0o---

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 JUNE 11, 2013

17 ---o0o---

18 APPEARANCES:

20 FOR THE PEOPLE: ALISON FILO
 Deputy District Attorney
 22 FOR THE DEFENDANT: BRIAN MADDEN
 Attorney at Law
 24 OFFICIAL COURT REPORTER: JAMIE L. MIXCO
 C.S.R. No. 12708

1 San Jose, California

June 11, 2013

2 PROCEEDINGS

3 THE COURT: Thank you. We'll call the matter of
4 the People v. Craig Chandler. Counsel, state your
5 appearances for the record.

6 MR. MADDEN: Thank you, Your Honor. Brian Madden
7 appearing for Mr. Chandler. He's personally present in
8 custody.

9 MS. FILO: Good afternoon, Your Honor. Alison Filo
10 appearing for the People.

11 THE COURT: Thank you. We're here for the in
12 limine motions, and I have had an opportunity to read and
13 consider all of the points and authorities that have been
14 filed relating to the various issues. What I was inclined to
15 do is first go through Mr. Madden's in limines. And you did
16 give me a sort of, like, a title sheet that said one through
17 five, and I'm simply going to go through that order because
18 that's the order I have them.

19 And the first one is dealing with the defense
20 request to exclude the prior attempted burglary conviction
21 for the purposes of impeachment in the event Mr. Chandler
22 testified. Again, I read and considered the moving papers
23 filed by the parties, and if either Ms. Filo or Mr. Madden
24 wish to make additional comments at this time, you may do so.

25 MR. MADDEN: Your Honor, let me just simply state
26 this. I believe that we have extensively and accurately
27 stated our position, both in the motion itself, the initial
28 motion, and in our reply to the People's opposition. I'm

1 satisfied with the content of my moving papers.

2 On the other hand, should the Court have any
3 question about any of it, I will be happy to answer any of
4 those questions.

5 THE COURT: I will note, and I think it's obvious,
6 that everything that has been written and placed into the
7 moving papers by both sides, I've considered it and should be
8 incorporated in my ruling. In the event that I don't make
9 any specific comment on a particular fact, it doesn't
10 necessarily mean that I haven't considered that. And I
11 agree, they were extensive and thorough.

12 Ms. Filo, you wish to make any comments?

13 MS. FILO: Your Honor, the only thing I would add
14 to my papers, it would actually apply to any of my opposition
15 or any of my submissions to the Court, as a general rule, I
16 do not address and did not address 352 concerns just because
17 it's not something where the law is really at issue. It's
18 something that I know Your Honor will consider it in making
19 its decision. So unless there is some specific legal issue
20 that I wanted to address with the Court, I did not address
21 352 concerns. And if the Court wanted to engage in that
22 discussion, I'm happy to do it, but it didn't seem necessary
23 to do that, the context of the submissions to the Court.

24 THE COURT: Okay. Thank you. I am going to just
25 state some of the background, because it was a lot.

26 Concerning the prior attempted residential
27 burglaries, Mr. Chandler pled to the charges, and by his
28 conviction, he essentially had a felony/misdemeanor attempted

1 burglary conviction. He entered the pleas with the
2 understanding he would be sentenced on the misdemeanor
3 664/459. And if he successfully completed probation on the
4 misdemeanor, the felony attempted burglary would be
5 dismissed.

6 Court believes, based on everything presented to me
7 this was a negotiated disposition, although somewhat unusual.
8 After completing probation, the felony charge, which he had
9 pled to, was dismissed pursuant to 1203.4 rather than being
10 dismissed pursuant to the negotiated disposition.

11 Nevertheless, I believe the intent of the parties was clear.

12 The issue before the Court, I believe, is whether
13 the Court should allow the People to impeach Mr. Chandler if
14 he chooses to testify with a misdemeanor attempted burglary.
15 I will note that even though there is technically no crime
16 with misdemeanor attempted burglary, the District Attorney in
17 Santa Cruz on behalf of the People agreed to this conviction.
18 I believe Ms. Filo is bound by that agreement or disposition
19 entered by that particular county.

20 The Court believes it has broad discretion in
21 deciding whether to allow a defendant to be impeached with
22 the prior conviction. Based on the cases cited by both
23 counsel and Evidence Code Section 552.5, if the Court decides
24 to allow the People to impeach Mr. Chandler, they may do so
25 with the records of the conviction.

26 I have conducted and engaged in a 352 analysis,
27 taking into consideration all of the information provided,
28 including the fact that the attempted burglary incident is a

1 crime of moral turpitude, including dishonesty. I considered
2 the remoteness of the conviction, the dissimilarities between
3 the offending charge and the prior conviction. The Court
4 believes the probative value outweighs the prejudicial impact
5 and will allow the People to impeach Mr. Chandler with his
6 prior attempted burglary conviction as a misdemeanor if he
7 chooses to testify.

8 So on this particular in limine motion, that's the
9 Court's ruling. And on this particular in limine motion, Mr.
10 Madden, that will be a continuing objection by the defense.
11 If Mr. Chandler testifies, you will not have to object in
12 front of the jury, unless you wish to do so, obviously. As
13 far as the Court is concerned, your objection on this
14 particular issue is standing.

15 MR. MADDEN: May I be heard, Your Honor?

16 THE COURT: Yes, of course.

17 MR. MADDEN: A couple of points. I know the Court
18 didn't mean to, but this was a Monterey County case, not a
19 Santa Cruz case.

20 THE COURT: Thank you.

21 MR. MADDEN: Number 2, the Court indicated there
22 was a clearance pursuant to Section 1203.4. I believe that
23 is clearly in error, even though the clerk noted it.
24 Unfortunately -- well, all we have is the clerk's minute
25 order, but you can't get 1203.4 relief for an offense that
26 you were not placed on probation for. So that was clearly a
27 clerical error, and I suppose it's not particularly relevant
28 since the Court is not allowing the felony conviction to be

1 used, but it is used in the misdemeanor, allowing a
2 misdemeanor conviction.

3 The question that I would have would be, will the
4 People be -- the People then will not be allowed to discuss
5 the misdemeanor conviction, for example, in opening
6 statement?

7 THE COURT: That's correct.

8 MR. MADDEN: All right. And then if Mr. Chandler
9 chooses to testify, should I decide to lessen the blow of the
10 impeaching misdemeanor conviction, would I be using simply
11 the conviction itself? For example: Mr. Chandler, were you
12 convicted of a misdemeanor attempted burglary when you were
13 19 years old? Is that -- am I hearing that correctly?

14 THE COURT: You are correct. You are correct. I
15 don't think you necessarily need to use the actual document.
16 I mean, asking him the question and him responding in the
17 affirmative is fine.

18 MR. MADDEN: All right. What would then the People
19 be allowed to discuss, if anything, on that subject?

20 THE COURT: They would be allowed to obviously ask
21 the same questions they wanted to. Probably a little
22 differently to clarify it. And the only other thing they
23 will be allowed to do is the actual record of conviction.
24 Because there is a record, I'm assuming that the People would
25 get and have, which is the document. I don't think it offers
26 much, but I think in fairness to them, I would allow them to
27 do that because I'm not allowing any witnesses to be called
28 in order to prove up the conduct. And that's pursuant to 352

1 because you have that.

2 MR. MADDEN: That was my question. I wanted to
3 make sure we're not going to have a discussion concerning the
4 factual matter surrounding the arrest or the circumstances.

5 THE COURT: Right. And just so we're trying to get
6 a real clear clarification of the parameters of where we're
7 at, just so it's clear, he would be allowed to be impeached
8 with: He suffered a prior misdemeanor attempted burglary for
9 attempting to enter a house with the intent to rob someone.
10 That's the entire --

11 MR. MADDEN: Misdemeanor attempted burglary?

12 THE COURT: Intent -- yeah. Misdemeanor attempted
13 burglary, correct. To enter a house with the intent to
14 commit larceny.

15 Again, as I mentioned earlier, Ms. Filo, even
16 though this is not such a crime, you are bound by this
17 agreement.

18 Mr. Madden, you are right about whether or not it
19 was a clerical error. I'm not trying to make any future
20 rulings on the Monterey case. All I'm simply saying is that
21 the intent, based on everything you presented to me, is
22 clear. That's why I'm not -- I don't think in fairness the
23 People should be allowed to impeach him with a felony as
24 opposed to a misdemeanor.

25 MR. MADDEN: So in summary, you are granting my
26 motion and denying it in part?

27 THE COURT: Correct.

28 MS. FILO: Your Honor, the only clarification I

1 guess I would make to -- that I understand the Court's ruling
2 perfectly. I understand that that was the intent of the
3 parties. I actually don't think it was a clerical error that
4 the count was dismissed pursuant to 1203.4, because as it
5 turns out, there would be no other legal mechanism by which
6 it could be dismissed. Once he had pled, there was no other
7 way to dismiss it. I think that was the mechanism by which
8 the court had to because there was no -- you couldn't Section
9 17; it's a non-alternative felony. Doesn't matter for
10 purposes of this.

11 THE COURT: My understanding was in that unique
12 situation out of Monterey, I was assuming what was going to
13 happen was the judge -- sentencing judge wasn't going to
14 allow him to withdraw his plea of guilty, enter a plea of not
15 guilty, and dismiss it. I would think procedurally that
16 would probably been the cleanest way to do it after he
17 successfully completed probation.

18 MR. MADDEN: That would have been one way. But of
19 course he was completing probation on a misdemeanor matter,
20 placed on misdemeanor probation. I think the case is almost
21 more tend to amount to a deferred entry of judgment or Prop
22 36, where we do this and you're not going to have any record
23 for purposes for this. The 1203.4 certainly would apply to
24 the misdemeanor.

25 THE COURT: Right. No, I agree. And at least for
26 my purposes, for all of these reasons, that's my ruling.

27 MR. MADDEN: All right.

28 THE COURT: Thank you.

1 The next one is motion to admit testimony from Dr.
2 William O'Donohue, an expert in the interviewing of victims
3 of child sexual abuse. Again, I read and considered the
4 points and authorities, and any additional comments? I will
5 start with, Ms. Filo.

6 MS. FILO: Thank you, Your Honor. So this was
7 actually one that I didn't necessarily oppose, because I
8 think the defense is entitled to present an expert on the
9 issue of forensic interviews, for lack of a better word. The
10 only thing I do object to, and will object to, is in that
11 motion, Dr. O'Donohue talks about primary inconsistencies,
12 secondary inconsistencies. He uses -- he wants to point to
13 examples of the children's responses that are inconsistent
14 with each other. That, I think, is well within the purview
15 of the jury, whether those statements are in fact
16 inconsistent, whether they are -- that is something that's
17 well within the scope of the jury.

18 I think to point out or to question or criticize
19 the interrogation methods or the time and place or how many
20 people had access to the child, I think those are all
21 appropriate issues for the defense.

22 But I think the expert cannot be used to tell the
23 jury what is or is not a consistent or inconsistent statement
24 that's well within their purview.

25 So with that exception, I would submit the motion.

26 THE COURT: Mr. Madden.

27 MR. MADDEN: Well, I will make two comments, Your
28 Honor. The People did not provide any opposition to this

1 motion. It was my understanding, until Ms. Filo stood up,
2 she wasn't opposing this motion, and I suppose that I'm
3 prepared to submit it. But pointing out these
4 inconsistencies, for example, is not tantamount to making a
5 finding of who they are believing, who the expert's believing
6 or not. That's what she's driving at. Maybe I'm
7 misunderstanding. He's just using that to explain the
8 significance of inconsistencies itself. But to talk about
9 the inconsistencies, you have to get into what they are.

10 THE COURT: My take from Ms. Filo is that the
11 nature of the question, the nature of the interrogation, and
12 just all the problems this particular expert will identify
13 generally, and in this case, it would seem like his
14 testimony -- that this could result in inconsistencies within
15 a particular child's testimony. And I think her objection
16 was to go through all the inconsistencies that he identifies
17 and point them out. I think it might be reasonable, and I'm
18 not saying this is what I'm saying, but it might be
19 reasonable when he's talking about that area, for example,
20 that this type of questioning or interrogation techniques
21 will result in inconsistencies within the interview. An
22 example of one might be appropriate, but to go through the
23 whole interview, I think would be time-consuming, but it does
24 illustrate his testimony and the point he's trying to make.

25 MR. MADDEN: I understand. And I think in his
26 report, even though it's obviously a lengthy report, I
27 haven't totaled them up, but I don't think there are more
28 than several things referring to each of the kids. It's not

1 like pages and pages and pages of inconsistencies. I think
2 he took several examples for each of the kids. He was
3 limited and will be limiting his testimony.

4 THE COURT: Right. That was my expectation. I
5 think the amount of information that was presented is to
6 thoroughly demonstrate the points you were trying to make.
7 My feeling was that not everything that was attached was
8 going to try to be presented to the jury.

9 MR. MADDEN: Correct.

10 THE COURT: But it was basically trying to
11 demonstrate to the Court why this was relevant and allowable.

12 MR. MADDEN: Right.

13 THE COURT: So is that clear enough what I'm
14 thinking? Because I think it would be fair for you to make a
15 point and then use an example to illustrate that point. But
16 I don't think it should be numerous, and I don't think it
17 should be excessive, because I think illustrating the point
18 in one particular area of the interview will be sufficient.

19 MS. FILO: I guess my problem -- and again, when
20 I'm looking through -- when I'm looking through the motion, I
21 guess the motion -- I guess his report isn't -- it is -- I'm
22 sorry. It's pages 27 through 31 or -- sorry -- 32 of Dr.
23 O'Donohue's report. And what it says is things are primary
24 inconsistencies, secondary inconsistencies, things like that.
25 None of those things are ever tied to an inappropriate
26 question. So he's not in any of these examples saying this
27 inconsistency was the result of this kind of questioning.
28 That's my concern.

1 So I just don't want the expert to be used to say
2 that these statements are in fact inconsistent when it
3 doesn't have any connection to a specific question or the
4 impropriety of the question in the way it was asked. And
5 again, to say something is round or something is curved, I
6 think that's well within the jury's decision-making abilities
7 to say, is that inconsistent? Or, is that a child just using
8 different words to describe the same thing?

9 So that was my concern, is that this -- in those
10 particular instances where he's talking about these
11 inconsistencies, there is no connection between what he's
12 identified and a specific impropriety within the context of
13 the interview.

14 If it is done in the way that Your Honor suggests,
15 which is: Did you find instances of misconduct or
16 interrogation misconduct? Yes. For instance, when the
17 officer asked this and she said it this time. Ms. Filo asked
18 it at the preliminary hearing, she said this. Those improper
19 questions or inaccurate questions can lead to confusing
20 results. I think that's fine. I just want to make sure that
21 this isn't flashed up as a chart somewhere to say the kids
22 are inconsistent when that's not tied to any forensic
23 interviewing technique, and it's not part of his general
24 presentation to the jury of forensic interviews.

25 THE COURT: I think I understand your concerns, and
26 I think we're on the same page. I'm identifying where I
27 believe the parameters are. For example, let's say he points
28 out something and he says, for example: Inconsistencies

1 right here. And he goes: First says round and then says
2 curve, okay. Let's say he's using that as an example. Well,
3 if that's the example, the jury is going to say, you know, it
4 goes to his weight.

5 But my concern is repeated examples: Here and here
6 and here, and just over and over. I think that's excessive.
7 And I'm hoping, Mr. Madden, you're following what I think is
8 appropriate and I think you understand Ms. Filo's concerns.

9 MR. MADDEN: I do, and I think I understand the
10 Court's concern and I think things will work out. Obviously,
11 if you think that it's becoming excessive or consuming an
12 undue amount of time, I'm sure Ms. Filo will object and you
13 make a ruling, so --

14 THE COURT: Absolutely. Absolutely. And off the
15 record briefly.

16 (Whereupon, there was a discussion off the record.)

17 THE COURT: We'll go back on the record. The next
18 in limine is No. 3, motion to exclude evidence related to an
19 incident involving Mr. Chandler and Hilda Keller.

20 MR. MADDEN: Yes, Your Honor.

21 THE COURT: Okay. Ms. Filo.

22 MS. FILO: Judge, I had a beautiful motion written
23 in opposition to this, and I had my girlfriend walk over what
24 I thought I had filed with the court, which I did, and it's
25 not in here. So I don't know if I wrote it separately or
26 what I did. But if the Court will permit it, I would like to
27 make my oral response to the defense's motion.

28 THE COURT: Sure. And not file it?

1 MS. FILO: She didn't even bring it. I thought
2 this was it. I thought it had been filed with the court. I
3 thought it was here. It's not, and it's not in here either.

4 THE COURT: I could tell you I have never seen any
5 response or opposition.

6 MS. FILO: Entirely my responsibility, Your Honor.

7 So -- but I do have very strong feelings about this
8 particular motion, and it is based on this. The People have
9 the burden of proving beyond a reasonable doubt that a 288(a)
10 touching is lewd and lascivious; that it's done with lewd
11 intent. And when we're talking about sexual organs or a body
12 part that everyone -- all of us would accept or understand is
13 designed for sexual pleasure, then I think that obstacle is
14 relatively easy for the People to overcome. Certainly, when
15 you are touching, you know, intimate body parts, unless
16 you're a member of a specified medical profession, you are
17 doing it for sexual pleasure. That's the only reason that
18 body part is being touched.

19 Here, we have a unique situation, where Victim No.
20 3 really is only touched on her feet. That's the body part
21 that's at issue. And to be honest, the People would not have
22 even filed that as a 288(a) count had we not had this
23 background information of Mr. Chandler's interaction with
24 Ms. Keller. I don't know that we could have proven that that
25 conduct was in any way lewd or suspicious or sexually
26 motivated absent this other piece of information, which
27 becomes so highly relevant and highly probative.

28 And in the context of Ms. Keller, what we find is

1 that she was -- so she was so clear that Mr. Chandler's
2 behavior towards her was sexually motivated, and a part of
3 that was this specific interest in feet. And questions to
4 her about feet and wanted to take pictures of feet, that made
5 her so uncomfortable that she asked to transfer from one
6 school to another school. So it is the combination and the
7 intersection of those ideas that a otherwise non-sexual body
8 part now has specific sexual meaning to this defendant. And
9 then when this inexplicable conduct with Victim No. 3 occurs,
10 it now has an explanation. It's no longer inexplicable now.
11 It's understood now and it makes sense.

12 So it is because the People have that high burden
13 of proving that conduct is motivated by a sexual interest,
14 that the conduct with Ms. Keller becomes so highly relevant
15 and highly probative.

16 THE COURT: Thank you.

17 Mr. Madden.

18 MR. MADDEN: Do you have any questions about my
19 position as stated in my moving papers?

20 THE COURT: No. It's fairly clear to me.

21 MR. MADDEN: I hope it was better than fairly
22 clear.

23 THE COURT: Okay. No, it was.

24 MR. MADDEN: Your Honor, in short, without going
25 back over it, the incident with Ms. Keller has nothing to do
26 with sexual interest in children. It was a sexual
27 interest -- it was a sexual interest in Ms. Keller. It's not
28 a crime that would mean -- if this is allowed to come in,

1 then any man who has any interest in any body part of an
2 adult female necessarily has that same interest in children.
3 It just doesn't follow, that's why it's not relevant.

4 THE COURT: Okay. Let me ask a couple of questions
5 to both of you because there was some information that was
6 lacking for me. I mean, there is some information that when
7 we're dealing with 352 and prejudicial versus probative, the
8 first thing that comes to mind when I was reading the in
9 limine motions is that this incident did not appear to be
10 1101 or 1108. It looks to me, because let's say there is
11 lewd conduct towards a woman, an adult, that's not 288(a).

12 The thing that comes to my mind when I read these
13 is basically, for lack of a better word, some sort of foot
14 fetish. I don't know the date of the incident, when this
15 incident occurred as it relates to the time frame in the
16 pending charges. Wasn't clear to me at all.

17 So, Ms. Filo, do you have an approximate date when
18 this incident occurred?

19 MS. FILO: I do, Your Honor. It was in 2005.

20 MR. MADDEN: I think that's correct. That's
21 consistent with my recollection. So that was a minimum of 6
22 years -- am I doing my math correctly? This was a 2011
23 arrest. Minimum 5 years prior to that; at least 5 years
24 prior.

25 THE COURT: And it appears that the incidents
26 involved in our case occurred in 2012.

27 MS. FILO: No, Your Honor. It was 2010/2011 school
28 year and then the 2011/2012 school year.

1 MR. MADDEN: Counts 1 through 3 involve the
2 2011/2012 school year; Counts 4 and 5 involve the 2010/2011
3 school year.

4 THE COURT: Okay. That's one question I had. The
5 other question I have, and Mr. Madden is correct, we're
6 dealing with an adult female, but I have no information about
7 the adult. I think it makes a difference if we're talking
8 about -- factually, are we talking about someone who, for
9 example, is petite with, let's say, petite feet? Because the
10 way I see it, there is some sort of foot interest and
11 because -- if we're just looking at children and adults, I
12 think it's important to get more information so I get a
13 better sense of, is there a close or connection between this
14 adult and possibly a child?

15 Do you hear what I'm saying as far as the issue of
16 relevancy goes? I don't know if either of you are going to
17 tell me: Well, it doesn't matter. I'm not sure if that's
18 the case either.

19 MR. MADDEN: Well, I wasn't -- I didn't represent
20 Mr. Chandler at the prelim. I never met Ms. Keller. I can't
21 address that issue. That information is not in the
22 information that I have in discovery.

23 THE COURT: Okay.

24 MR. MADDEN: However, the key problem here, as it
25 was the prosecutor's problem at the prelim, and in my opinion
26 a problem, the court didn't see at the prelim, that the issue
27 here is not a sexual interest in feet; it's a sexual interest
28 in children. And establishing a foot fetish, if there is

1 such a thing, in an adult, that it does not follow that you
2 have a sexual interest in children at all.

3 THE COURT: Well, if there is a foot interest in an
4 adult and that interest in this particular incident is,
5 basically, go away. No interest, then --

6 MR. MADDEN: I didn't understand that.

7 THE COURT: The adult was not interested,
8 Ms. Keller.

9 MR. MADDEN: Okay.

10 THE COURT: You know, like you used the term
11 "creepy". Just stay away from me. She's basically -- the
12 offer of massage, or whatever, with the feet was rejected.
13 Okay. And if there is a foot fetish, then is it reasonable
14 to assume that, well, maybe I could satisfy that fetish with
15 a child who won't reject me, who trusts me, and allows me to
16 do it?

17 MR. MADDEN: Well, then you have to extend that
18 logic to include, if a man has then a sexual interest in a
19 woman's mouth and her breasts, her buttocks, her vagina, does
20 that mean he has a sexual interest on those body parts of the
21 child? I think the answer is clearly no.

22 THE COURT: Well, Ms. Filo, go ahead.

23 MS. FILO: Thank you. I think if an adult male has
24 a sexual interaction with an adult female and they have
25 sexual intercourse, and he says, I'm interested in an adult
26 female's vagina, fine. But if an adult male has -- if he has
27 sexual intercourse with a child, then we could also say he's
28 interested in a child's vagina. They are not mutually --

1 they don't have to be mutually exclusive; they certainly
2 don't have to be mutually inclusive. But the problem I have
3 is that the object itself in this -- with this particular
4 victim is not a sexual organ.

5 So, Mr. Madden is focusing on the age of the
6 participants; that somehow the conduct is less sexual because
7 of the age of the participants. What I'm saying is that it's
8 not the age that's the primary focus; it's the body part that
9 ends up being the primary focus. So it is in that connection
10 that the -- I mean, again, the People have the burden of
11 proving beyond a reasonable doubt that that touching is
12 sexual, and it's not an overtly sexual body part, so how do
13 we prove that? How would we ever prove that absent a
14 statement from Mr. Chandler: I have this crazy thing about
15 feet, you know. We would never be able to prove that.

16 So it's not 1108 that the People are offering the
17 evidence. It is 1101(b). This is classic 1101(b): motive,
18 opportunity, lack of mistake, intent. What is his intent
19 when he sees a foot? And that's where the People believe
20 that this evidence is critical. I mean, I don't know how
21 we -- I think being able to prove that a sexual -- that a
22 touching of a foot in absence of any other information is
23 sexual would be highly difficult without knowing that there
24 has been a prior instance of a sexual interest in feet. The
25 age is not the issue; the body part is the issue.

26 MR. MADDEN: I disagree with counsel's analysis,
27 and I stated it in writing. I might add that my motions in
28 limine were submitted in a timely fashion. They were given

1 to the People. The People filed a response. The People
2 indicated verbally that they were going to address three
3 issues. They did it as three issues. They didn't address
4 two of the issues. I'm -- if the People want to file a reply
5 or an opposition, that's fine. I'll file a reply. But I
6 mean, I'm in total agreement with the Court's initial
7 comments. This is neither admissible under 1108 or 1101
8 for -- mainly for probative value because of the conduct.

9 THE COURT: Well --

10 MR. MADDEN: It's not probative because it involves
11 an adult and it's not illegal conduct. It's not sexual
12 conduct.

13 MS. FILO: It is sexually -- it may be sexually in
14 her eyes.

15 MR. MADDEN: I misstated that. I didn't mean to
16 say it couldn't be interpreted that way. I apologize.

17 THE COURT: I could tell you, I'm not prepared to
18 rule on it this afternoon because I've looked at this and I
19 was trying to work it through my mind. There was a lot of
20 things happening here. And I was aware of what happened at
21 the preliminary examination and some of the problems that
22 arose, so I think that I have a pretty clear idea of the very
23 narrow area the People are looking at. And you're requesting
24 this information specifically under 1101(b) and intent?

25 MS. FILO: Absolutely, Your Honor. And again, I
26 have a thorough motion in limine; that the only thing I could
27 think of is that I misfiled it in my own computer system. I
28 don't know how it didn't get included in my motions to the

1 Court, so I apologize to both Court and counsel. And I will
2 go back and find it. It's in my computer somewhere because I
3 wrote it, but I will get it to the Court. And we certainly
4 have plenty of time prior to the trial, and I'm happy to
5 defer the ruling on the motion until Your Honor returns.

6 THE COURT: Because we have so much time, I mean,
7 it sort of benefits you, Ms. Filo. And I think the word Mr.
8 Madden was looking for when he was speaking was -- I think
9 the sense I got, what he wanted to say, is somewhat
10 frustrated.

11 MR. MADDEN: Yes.

12 THE COURT: But I know that these rulings are
13 important to both of you, and I know, Mr. Madden, you don't
14 want to get a preliminary ruling and then I change it. You
15 want to know where you stand going in, as you do, Ms. Filo.
16 And I think I owe it to both sides to look at this carefully,
17 because, quite frankly, I didn't look at it as carefully as I
18 thought. I had some concerns based on the same issues Mr.
19 Madden's raised already.

20 MR. MADDEN: Your Honor, I have no objection to the
21 People having a reasonable amount of time to file an
22 opposition to this, provided I have sufficient time too, and
23 I guarantee you I will file a reply to it. So we have time
24 to do those things, and I'm happy to do it informally.

25 THE COURT: Okay.

26 MR. MADDEN: Without specific dates and times
27 because I know you are going on vacation very soon.

28 THE COURT: Right. It sounds --

1 MR. MADDEN: We all have lives.

2 THE COURT: It sounds like Ms. Filo could file it
3 relatively quickly.

4 MR. MADDEN: It sounds like it's been done.

5 MS. FILO: It's somewhere.

6 THE COURT: Soon as you file it, if you could file
7 it with the court in some manner, they will put it in my box.
8 I will have it when I come back.

9 MS. FILO: Certainly.

10 MR. MADDEN: Ms. Filo -- I'm satisfied with Ms.
11 Filo e-mailing to me when she finds it. I assume that will
12 be before the end of the week.

13 THE COURT: Okay.

14 MR. MADDEN: I will be gone the rest of the week,
15 but I will be back next week. I could address it.

16 THE COURT: Then we'll do that and we'll address it
17 when we come back. We'll be talking about our scheduling
18 when we are done here.

19 The next motion is -- before we move on, I could
20 tell you, I was looking at it as a foot fetish issue. Quite
21 frankly, I didn't know this involved one particular child and
22 that was the only conduct involved with that particular
23 child. That, I didn't know.

24 MR. MADDEN: Well, that's not exactly right, Your
25 Honor. I mean, there will be testimony of other children --
26 at least two of the three named victims that will indicate
27 that Mr. Chandler put things on their feet that they were to
28 identify right, objects. So it's not just the child in Count

1 3. And I might add, I share -- I mean, although I have been
2 mystified as to why the complaining witness in Count 3 is
3 even there, but that's the People's decision.

4 THE COURT: Okay. Anyway, I identified that
5 struggling with the 1101/1108(b) and the issue adult/child
6 are issues there, and I would make every effort to address it
7 as soon as I come back.

8 The next one is motion to exclude evidence related
9 to an incident involving -- excuse me -- this is No. 4,
10 motion to exclude the testimony of Mariam Montgomery about
11 the doors to Mr. Chandler's classroom being locked on one
12 occasion, and I will take any additional comments from either
13 side. This is the locked door incident, Mr. Madden.

14 MR. MADDEN: Your Honor, I'm a little bit lost
15 here. Did Ms. Filo respond to this?

16 THE COURT: I believe she did.

17 MR. MADDEN: Your Honor, again, I'm satisfied with
18 my motion itself and with my reply, and I don't want to
19 regurgitate that. I think my position was clearly stated in
20 both documents. The second one, taking into account the
21 People's position, I disagree with their position for the
22 reasons stated. Unless you have a question, I will -- you
23 could address -- Ms. Filo could address you.

24 THE COURT: Okay.

25 Yes, Ms. Filo.

26 MS. FILO: Thank you, Your Honor. The only thing I
27 wanted to point out, the defense has cited *People v. Hines* in
28 its opposition to the People's assertion that this -- well,

1 let me state for the record that the conduct involved is a
2 child who comes to Mr. Chandler's classroom door and is
3 apparently pounding on the door. The next door school
4 teacher, Mary Montgomery, comes out to hear what the raucous
5 is and asks the child, "What on earth are you doing?" He
6 says, "Well, the door is locked," then seconds later the door
7 is opened and Mr. Chandler's standing in the doorway.

8 So the question is: Does the child, him or
9 herself, have to be called in order to explain that, or could
10 Ms. Montgomery's testimony suffice? And Evidence Code §1241
11 talks about a statement which is explaining conduct. That's
12 what it is designed to do. And the defense has cited *People*
13 *v. Hines*. And in that case the declarant wanted or was
14 trying to testify about a phone conversation, and the
15 specific question was, "Who's there with you?" And she says,
16 "Williams is here with me." It's not conduct. There is no
17 conduct to explain.

18 It's not like he said, Hey, who is making that
19 terrible racket in the background? Why is your phone all
20 fuzzy, or why do you keep hanging up on me, and she's giving
21 the explanation to explain the conduct. She's simply
22 answering a question: Who is there with you? Williams is
23 here. So there is no conduct to explain, so the court says
24 no. That is classic hearsay. When you just ask somebody a
25 question, they answer it, it's hearsay.

26 This is a very different situation. This is
27 exactly what 1241 was designed to address, conduct that would
28 otherwise be unexplainable: Why on earth are you banging on

1 that door, child? And he says, "Well, because it's locked."
2 "Oh, okay." And then the door opens. So that is exactly the
3 kind of conduct 1241 is designed to address, and I think the
4 case that has been cited for something contrary to that
5 position is inapplicable.

6 THE COURT: Thank you.

7 Any additional comments, Mr. Madden?

8 MR. MADDEN: I would indicate that the conduct has
9 been explained and is not an issue in this case. I've
10 indicated that in both my motion and my reply. I do believe
11 that *Hines* is fable to the People's position as the reasons I
12 stated. I will submit it on that.

13 THE COURT: If I understand the facts and the
14 issues, is that Ms. Montgomery was a teacher who had a
15 classroom next to Mr. Chandler's. All of the facts are in
16 the moving papers. It was my understanding that the reason
17 for asking for this particular evidence and the theory by the
18 People was that Mr. Chandler would have his classroom door
19 locked during regular school hours, which is during the
20 period of times that the alleged misconduct with the children
21 occurred. It would seem that that would be relevant.

22 Pursuant to Evidence Code 1241, primarily, and the
23 circumstances of this incident, the Court will allow
24 Ms. Montgomery to testify about this incident. The Court
25 believes that the relevance in knocking on the classroom door
26 is to gain entrance into a locked classroom. Simply knocking
27 on the door in the Court's opinion is ambiguous without the
28 contemporaneous by the student. There could be a lot of

1 reasons why he's knocking on the door: Giving notice that
2 he's going to come in. Maybe not allowed to enter the
3 classroom without first knocking. So it's in my opinion
4 ambiguous without the statement.

5 So for those reasons, the evidence will be allowed
6 over the defense objection. And this is another in limine
7 motion, Mr. Madden, will be continuous throughout the trial
8 and you will not have to interject and object when the
9 testimony occurs, unless you wish to do so. And your
10 objection will be noted at that time, in any event.

11 MR. MADDEN: Thank you, Your Honor. I appreciate
12 that courtesy.

13 THE COURT: You are welcome.

14 The next motion is the defense objection to the
15 People's expert relating to grooming. This is an interesting
16 area for me, and I do have some questions. Maybe if I just
17 state my comments and concerns and confusions, maybe Ms. Filo
18 or Mr. Madden, or probably Ms. Filo initially, you could
19 address them. There is a lot going on here.

20 I did review the cases cited by Ms. Filo, and
21 generally grooming seems to suggest that it is the gaining of
22 trust, the selection of specific victims, and the normalizing
23 of the behavior. At least some of the cases that I reviewed
24 mentioned by the People seem to involve individuals that were
25 generally desensitizing the child to inappropriate behavior,
26 targeting select or specific children, and eventually getting
27 the child to agree or consent to certain behaviors or sexual
28 acts, obviously with their knowledge, and then getting the

1 child to agree not to tell. So it seemed like there was --
2 grooming seemed to address, you know, getting the trust,
3 picking a specific individual, gradually getting them to
4 agree to the sexual conduct.

5 Here, it was a little unclear to me because we have
6 a different situation that I didn't see, because we have Mr.
7 Chandler who is a teacher who is in a position of trust.
8 That's not to say that a fact-situation like that would not
9 involve that person in that position selecting certain
10 children and then gaining more trust to be involved in that
11 particular activity.

12 In a sense, I see this as, you know, children are
13 being blindfolded, are being tricked into certain behavior,
14 but at the same time, I think that you have to get the
15 children's trust to agree to this type of behavior. I don't
16 know if they had a choice under the circumstances because
17 this is the teacher, and I'm not sure if there was any
18 situation going on, where after the tidbit occurred, Don't
19 tell anybody what's going on.

20 So I'm not sure what the People are requesting,
21 whether their expert will be talking about generally what
22 grooming is and the factors and how it applies in our
23 particular case. I can say that some of the points Mr.
24 Madden brought up, and I think in his motion he actually
25 labeled them one through five --

26 MR. MADDEN: That's correct, Your Honor.

27 THE COURT: Let's see --

28 MR. MADDEN: On page 11 on my reply.

1 THE COURT: I don't -- I had it here somewhere.
2 But general reference to some of the points you raised. As
3 you both know, the jury doesn't need to be wholly ignorant of
4 the subject matter of opinion to justify its admission. Even
5 though the jury has knowledge of the matter, the expert's
6 opinion may be admitted whenever it's to the jury. And in
7 this type of area we're talking about expert opinion based on
8 special training and experience.

9 So those are the areas I'm a little concerned with.
10 Ms. Filo, I'm thinking what I'm going to need from you is a
11 detailed offer of proof and what you would present and how it
12 is relevant in our case because I don't have a lot of
13 information. But since we have so much time before the
14 actual evidence, it gives me the luxury to ask for that. I'm
15 not saying I'm excluding it, but I want to make sure I feel
16 comfortable, that if I do allow it, it's appropriate. And so
17 those are the -- this isn't a classic grooming case, at least
18 from what I read in cases. It's very different.

19 MS. FILO: Your Honor, I guess what I should say is
20 this. The proposed expert is Robert Dillon. He's a
21 detective with the San Jose Police Department who specialized
22 in child exploits and has done hundreds and hundreds of child
23 sex assault cases. And one of the things I have been very
24 careful to do, the case law instructs me, is not to give him
25 any real specifics about our particular fact-pattern because
26 I think that that's inappropriate and I don't think that Det.
27 Dillon is entitled to say the behavior that Mr. Chandler
28 engaged in on this occasion or that occasion constitutes

1 grooming. I think that's what the case law really says he
2 cannot do.

3 I agree with the Court, that it is a little bit
4 unique in this situation, and I think I have to be able, and
5 the jury has to be able, to understand. And I think it is
6 disabusing jurors of the notion that if you sexually assault
7 a child, or four children, or five children, that you are a
8 rampant pedophile that will assault every child in arm's
9 reach. Particularly, when I see Mr. Madden's witness list
10 that has 35 children on it, I think there is going to be some
11 attempt to say, you know, all of these children engaged in
12 this behavior, why is it just these five? Why would just
13 these five be singled out by Mr. Chandler?

14 And so I think that the process of grooming in the
15 traditional sense by the creepy old neighbor in the alleyway
16 to entice children, give them gifts to gain their trust, Mr.
17 Chandler was able to skip that step. But there is a process
18 by which a selection occurs, which victims are going to be
19 safe: How am I going to be able to escape detection? Which
20 are the leaders in the classroom or not the leaders in the
21 classroom? Who have parents that are non-English speakers?
22 Those kinds of issues that really occur in a selection
23 process.

24 How do we desensitize or how would someone
25 desensitize a child to behave such that it would become
26 normal, which is exactly what the Court talked about. That,
27 I think, is what the People are intending to use Det. Dillon,
28 to discuss how someone who wants to commit this type of crime

1 would desensitize and select a victim from a world of
2 victims. I mean, you have a county of them, a city of them,
3 you know, a neighborhood of them, a classroom of them. No
4 matter how big or small that universe is, each offender has
5 to choose a victim. How is that process done and why? And
6 what do you do to accomplish that? And that, I think, is
7 really the focus of Det. Dillon's proposed testimony.

8 THE COURT: Okay. And I think that's very helpful,
9 because the moving papers were rather just general about
10 grooming, and, quite frankly, it wasn't very helpful. I
11 mean, at least identified the issues. What I'm going to
12 request, Ms. Filo, because this again is important to both of
13 you, is to prepare something in written form to present to
14 the Court real narrowly what you are hoping to present, and
15 the fact that it's just general and how it factors into this
16 particular case. And give Mr. Madden an opportunity to see
17 what your offer of proof is and responding.

18 MR. MADDEN: If I could respond? Thank you, Your
19 Honor.

20 THE COURT: Yes.

21 MR. MADDEN: First of all, as stated in my motion,
22 there really is no California law on this subject.

23 THE COURT: Right.

24 MR. MADDEN: This is really the latest evolution
25 and -- along the line of the prosecutor's attempt to bring,
26 in my opinion, especially in this county, non-expert
27 witnesses to talk about syndromes that are very questionable.
28 There is no California law. There are two federal cases, and

1 they are interesting for a couple of reasons, as I pointed
2 out. One allowed it, one does not. One, however, was --
3 well, one allows it and one would not, but both allowed the
4 same witness, which is interesting. The analysis was really
5 quite good.

6 One of my real concerns about expert testimony in
7 this area is that this man, Rob Dillon, is not an expert.
8 He's an experienced officer. Not a sergeant. Not a
9 lieutenant. Not a captain. I don't believe he works in
10 sexual assaults any longer. I believe he's in patrol. I
11 could be wrong about that, but I think that's where he is.
12 He's not familiar, I'm assuming, as I indicated in my motion,
13 with any of the scientific literature on grooming. There is
14 a body of literature on it. It's a body of literature that
15 is unformed.

16 There is scientific agreement about what it is and
17 what it isn't. I addressed those points with respect to Dr.
18 O'Donohue's position, who is a scientist, who is a
19 psychologist, who is an expert, who has written. It will be
20 one thing if they are bringing in someone who is qualified
21 from an academic standpoint who is familiar with the
22 scientific literature, but they aren't. They are talking
23 about an officer who had 15 to 25 hours of whatever they get
24 in the academy, plus his experience during the three years.
25 And then they march somebody in, they talk about general
26 things. They can't know the facts of the case.

27 I'm offended by it. I always have been. And for
28 the reasons that I stated, this is not helpful at all, and,

1 in fact, isn't agreement in the scientific community about
2 what grooming conduct is. You could have certain conduct
3 that's identical conduct, which is grooming for one man, not
4 for another. Obviously, a school teacher who has access and
5 in the presence of children every day, who could have no
6 sexual interest in children will show all of these, quote,
7 grooming factors by virtue of the fact he's their teacher.

8 It's bootstrapping of the highest order and it's
9 very troubling to me and it doesn't really tell the jury
10 anything. It could be argued by the People -- they are going
11 to argue it, they have a right to argue it, but to bring in a
12 non-qualified expert to talk about it is wrong and it
13 shouldn't be allowed.

14 THE COURT: Thank you, Mr. Madden.

15 What is actually the case -- some of the cases I
16 read which concerned me, but apparently the courts allowed
17 it. In those cases, they allowed the expert to go that next
18 step and hypotheticals and identify certain factors. In this
19 particular case, if it's consistent with grooming, I think
20 that was occurring with those cases. Again, I haven't made a
21 final decision on this, but I would like additional
22 information and I'll rule on that before or as soon as I can
23 when I return.

24 MR. MADDEN: Will I be given an opportunity to
25 reply to that?

26 THE COURT: Absolutely. Absolutely. That's
27 another reason, Mr. Madden, that's why I'm asking Ms. Filo to
28 put in written form with the detailed offer of proof what you

1 are hoping to present through this particular expert witness.
2 And once I get the response, I will rule, you know, as soon
3 as possible.

4 MR. MADDEN: Your Honor, with respect to this one,
5 since the People have not written their opposition, I want to
6 give the People a reasonable amount of time, could we get a
7 date?

8 THE COURT: Ms. Filo.

9 MR. MADDEN: That would be reasonable.

10 MS. FILO: Judge, I should be able to have it
11 within a week or so.

12 THE COURT: Let's say --

13 MS. FILO: The 18th, maybe?

14 MR. MADDEN: On or before the 18th.

15 THE COURT: You comfortable with that, Mr. Madden?

16 MR. MADDEN: Sure.

17 THE COURT: You file your response on or before
18 June 26th. I selected that date because I will be back that
19 day.

20 MR. MADDEN: Okay. That's a Wednesday?

21 THE COURT: Yes, June 26th.

22 MR. MADDEN: Should we -- okay. Maybe that Friday
23 we should --

24 THE COURT: Right. We'll talk about a date when
25 we're done this afternoon.

26 MR. MADDEN: Okay.

27 THE COURT: But I'm going to want to meet with
28 counsel that week sometime to just finalize the jury

1 selection process and stuff. And although I'll be back
2 Wednesday, I may or may not be ready to rule on Friday, but
3 we'll talk about it.

4 MR. MADDEN: Okay.

5 THE COURT: Okay. I think those are all Mr.
6 Madden's motions.

7 MR. MADDEN: I have some other things to talk
8 about, but I will be happy to discuss that in chambers.

9 THE COURT: Okay.

10 MR. MADDEN: Just to alert Ms. Filo and sort of a
11 laundry list of things that have to be resolved.

12 THE COURT: Okay.

13 MR. MADDEN: Quasi-motions in limine.

14 THE COURT: Then I just want to touch on Ms.
15 Filo's. She had some motions in limine in her initial brief
16 she filed after her witness list on page 9. She has the
17 statement of the children describing acts pursuant to 1360,
18 and we already addressed grooming. So that's the only
19 additional one, Ms. Filo, is the 1360 issue you put in your
20 in limine motions.

21 MS. FILO: That was it, Your Honor.

22 THE COURT: Okay.

23 Mr. Madden, do you have any response to that?

24 MR. MADDEN: No, Your Honor. I think that
25 statements are admissible under 1360. I assume the People
26 are going to play the audio/videotapes and provide
27 transcripts to the jurors?

28 MS. FILO: Your Honor, generally the way I do it

1 is -- yes, I have the transcripts available to the jurors. I
2 have now done this, I don't know, more times than I could
3 recall, and my only frustration with doing that, and I
4 understand it's a local Rule of Court, but my experience has
5 been that they literally read through the transcript and pay
6 no attention to what's on the screen.

7 So certainly if the Court would permit it, I would
8 much rather play the video and simply make the transcript
9 available to them afterwards. I don't know how the Court
10 wants to do it, but I just am -- I've just seen it time and
11 time and time again, where they insist on reading the
12 transcript and will not even look at the video and --

13 THE COURT: The video is the interview?

14 MS. FILO: Correct.

15 MR. MADDEN: Well, I disagree with Ms. Filo. I
16 think it's helpful having both simultaneously. Not only that
17 it's in evidence, should they need to see it in
18 deliberations, that's theirs to see. I don't see that as a
19 big problem.

20 THE COURT: If there is any objection, I could
21 request the jurors that: You have the transcript. This is
22 going to be in evidence. You will have it for you during
23 deliberations. I'm going to ask all of you to -- as we do
24 with the witnesses -- to watch the interview and I could make
25 that suggestion, because I do think it's important. The
26 video is in evidence as well.

27 MR. MADDEN: Yeah, it will be. Not only that, the
28 transcript itself is not evidence.

1 MS. FILO: So, I mean, this is what I find sort of
2 ironic about the whole thing, is that the video or the tape
3 itself, the recording, is supposed to be the evidence. It
4 has always been the practice, and the jurors prefer, they
5 don't want to look back at the video. They want to look at
6 the transcript in the deliberation room. I'm always happy if
7 they get both. That's fine with me. If the Court would be
8 willing to give some sort of -- almost like a note-taking
9 admonition to the jury, which simply says that the transcript
10 is there to assist them as they review the video, but really
11 it is the video that they need to be watching, and that we
12 are presenting that testimony to them as if it were a live
13 witness.

14 THE COURT: Well, I feel comfortable with that
15 because that is the evidence. See, I wasn't aware of the
16 video. I wasn't sure if it was just tape recorded, and in
17 that sense, the transcript is a very important aid.

18 MS. FILO: Absolutely.

19 THE COURT: Whereas, you are visually watching it,
20 it's just a little different.

21 MR. MADDEN: Some are only audio recorded; some are
22 video recorded.

23 THE COURT: Okay. With the video recorded, I don't
24 have a problem with that because that is the evidence. With
25 the audio, no, because there I'm not going to have them place
26 your thing down and listen, because the transcript with only
27 audio is very helpful because you could hear the inflection
28 in the voices and what have you. But when you have a visual,

1 it's important to see and hear both.

2 MS. FILO: I completely agree with Your Honor. And
3 so I just want to make sure I understand Mr. Madden's
4 position, are we stipulating to the admissibility? Normally
5 we could have to conduct a hearing outside the presence of
6 the jury to determine a time, place, and content which
7 suggests reliability. I want to make sure that --

8 MR. MADDEN: I would like that to occur. I would
9 like a foundation to be established, but I'm not anticipating
10 you have difficulty doing that.

11 MS. FILO: Because what I would rather do, I don't
12 want to do that if the Court would permit me, I would hope
13 not do that during the trial. I'm not sure how to --

14 THE COURT: Well, there is a couple of ways of
15 doing it. You know, it's probative for a foundation to be
16 laid, but if you could demonstrate to Mr. Madden that you
17 will lay the foundation and you have the evidence to support,
18 the easiest thing is that we're agreeing to a stipulation
19 because then that's simple and very quick.

20 MS. FILO: Because I believe there were -- I think
21 there were four officers. It may be only three. There are
22 either three or four officers who are interviewed in the
23 different interviews. I would need the better part of the
24 morning in order to bring one of them in and have them lay
25 that foundation. I want to build that into our schedule, if
26 that's necessary.

27 THE COURT: That's not a problem. I'm thinking
28 that if you meet with Mr. Madden, and, you know, obviously

1 you have the witnesses to lay the foundation. If he feels
2 comfortable with it, as long as there is a stipulation for
3 some sort of foundation so it has some meaning to the jurors,
4 the date so she -- with the date, the time, the place, and
5 all that. My main concern is that the jurors have a
6 reference point to what they are about to hear. And if we
7 could do it by way of stipulation, I think that's very
8 efficient. I mean, it doesn't add or take away from the
9 trial, but it's something I'm hoping you and Mr. Madden could
10 work out. And if not, we will set aside a morning for you to
11 do that.

12 MS. FILO: Okay.

13 THE COURT: I'm pretty flexible about that. We're
14 going to go off the record for a minute.

15 (Whereupon, there was a discussion off the record.)

16 THE COURT: We'll go back on the record. I forgot
17 to mention that counsel and the Court discussed counsel
18 re-filing all of their motions and stipulating that the
19 re-filing of these we could make as originals. And the
20 reason the Court is making this request is because on the
21 originals I inadvertently used them as my working copy and
22 wrote all over them. And my understanding is counsel feels
23 comfortable with doing that and we will substitute. The
24 newly filed motions are identical to everything that has been
25 filed as originals. Correct, Mr. Madden?

26 MR. MADDEN: Yes, Your Honor. And so the record is
27 clear, what I did is that I got clean copies of my motions
28 without any of the attachments and the motions themselves,

1 the five I've given you, and I'm satisfied with -- we'll
2 stipulate they could be substituted for the original.

3 THE COURT: Thank you. We have the original
4 attachments and we will attach it to the originals. You
5 agree with that as well, Ms. Filo?

6 MS. FILO: Absolutely.

7 THE COURT: I didn't specifically rule that the
8 People's motion under 1360 is granted as well.

9 MS. FILO: Thank you.

10 THE COURT: We'll be in recess. When you are
11 ready, Mr. Madden, we could go into chambers.

12 MR. MADDEN: Thank you, Your Honor.

13 (Whereupon, the Court recessed.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18

19 Dated:

20

21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

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EXHIBIT 3

(Vol. 4)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 4

PAGES 442 - 467

JUNE 28, 2013

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REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

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DEFENDANT.

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JUNE 28, 2013

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JAMIE L. MIXCO
C.S.R. No. 12708

1 San Jose, California June 28, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen.
4 Welcome to Department 37. Thank you for your patience. I'll
5 call matter of the People v. Chandler, and I'll note that Mr.
6 Madden is present with his client, Mr. Chandler, and Ms. Filo
7 is present on behalf of the People.

8 We're here this morning to address some additional
9 in limine motions. As I recall, the Court needs to rule on
10 two specific issues that remain: The issue regarding
11 grooming and the issue regarding Ms. Keller. I will note --
12 well, before I go forward, I'll let both counsel know that
13 I'm prepared to rule. But if counsel has any additional
14 comments they wish to make, I will listen to anything else
15 you have to say.

16 Ms. Filo? Mr. Madden?

17 MR. MADDEN: Let me start with this, Your Honor.
18 I'm sure you have all of the documents. Just so I'm
19 comfortable, if we address the issue of the grooming motion
20 in limine first, the Court of course has my motion in limine.
21 The People filed a supplemental brief, which I assume the
22 Court has seen and reviewed and the Court -- I filed on the
23 24th my reply to the People's supplemental brief. I'm
24 assuming the Court has had an opportunity to see and review
25 that.

26 Additionally, with respect to the Helen Keller
27 motion -- Hilda Keller. That won't be the last time I make
28 that mistake. We have my motion, then we have the People's

1 opposition to the motion, and my reply to the People's
2 opposition. So the Court has read and reviewed all of that?

3 THE COURT: Yes.

4 MR. MADDEN: All right. I would like to say a
5 couple of things. If I could impose on the Court, perhaps,
6 to take up the grooming testimony first. I re-read all of
7 the papers yesterday afternoon, last night, and this morning.
8 And most importantly, I went down and re-read quite carefully
9 the *Raymond* case, the federal case that's extensively cited
10 in my motion in limine. I submit to the Court that the
11 *Raymond* case is as thoughtful and as a complete and accurate
12 assessment of the issue of a police officer testifying about
13 the subject of grooming. It could not be more specific. It
14 was incredibly well-thought-out, well-researched, and
15 well-written. I know the Court has read that case.

16 As far as I'm concerned, as the Court knows,
17 Officer Lanning, or Det. Lanning, whoever it is, the title,
18 was not allowed. His testimony was found to be inadmissible
19 in the *Raymond* case. And I submit to the Court that that
20 federal officer, although not a scientist, not a
21 psychologist, was sort of in the same -- not sort of, but in
22 the same position as the proposed expert, Officer Dillon.
23 Both are police officers. Officer Dillon's police
24 experience, writing experience hails in comparison to Officer
25 or Det. Lanning.

26 To my knowledge, Officer Dillon has written
27 nothing. He has never been published, no articles,
28 peer-review, or otherwise. And he's not going to be like

1 Officer Lanning. He's not going to be testifying about the
2 facts of this case, but just the general subject of, quote,
3 grooming. So I think that the Lanning case is the beginning
4 and the end of the analysis, and that's the spine of my
5 position. I'm not going to repeat any of the other arguments
6 that I made.

7 I will say one other thing about grooming, then I
8 will move on to the other. I'll make this comment, and I
9 addressed it in the reply. The Court, when we were last in
10 court, wanted a detailed offer of proof why it's relevant in
11 this case from the People. I submit the Court did not get a
12 detailed offer of proof. It got a few sentences of
13 generalities, of conclusions. I don't think it's what the
14 Court was talking about, and I don't think the People gave
15 that to the Court because they forgot to, it's just they
16 couldn't.

17 For purposes of this case, Officer Dillon is not an
18 expert. He may be an expert as Officer Lanning was in the
19 *Raymond* case, in terms of helping teach other police officers
20 and prosecutors how to detect or prosecute child molesters,
21 but he's not an expert in terms of being able to testify
22 about the subject of grooming for all of the reasons stated
23 in my brief, which I will not repeat here.

24 And I might add on this subject, I believe the
25 People failed to address three of the five reasons, any one
26 of the five will preclude this expert -- purported expert
27 from testifying, and the People did not address three of the
28 five.

1 Concerning Ms. Keller, I'm prepared to submit the
2 matter on all of my moving papers, unless the Court has any
3 specifics. But again, I went into great detail as to each
4 and every reason why Ms. Keller should not be allowed to
5 testify.

6 One point I would like clarified, it's not clear
7 from the papers, but the People referred to three statements
8 of Ms. Keller. And I have indicated it appears to me from
9 the moving papers that what is at issue is the one statement
10 concerning the feet. And I would like to hear -- get
11 confirmation from the People if that's their position,
12 because I only addressed that issue for the reasons I stated.

13 So as I stated in my conclusion, the statements to
14 Ms. Keller have no tendency and reason to support the
15 requisite intent. The acts and intent described in those
16 statements are not similar to those of the charged offense.
17 The evidence is prejudicial and confusing and there is danger
18 the jury will use the evidence for an improper purpose.

19 I will submit the matter, Your Honor.

20 THE COURT: Thank you, Mr. Madden.

21 Ms. Filo, any comments?

22 MS. FILO: Just briefly, Your Honor. I didn't -- I
23 did receive Mr. Madden's reply to our supplemental briefing,
24 and I do have a few comments, including those that he's made
25 today.

26 With respect to the grooming, what Mr. Madden has
27 referred to almost throughout his paperwork, and again in his
28 discussion today, is that Det. Dillon is not an academic.

1 I'm going to concede that. That's not necessary to make one
2 an expert. We call law enforcement officers as experts in
3 drug recognition or symptoms. They are not peer reviewed.
4 They don't write literature about it, but they are experts
5 because they are out there on the street.

6 And what he's talked about in his motion is that
7 that's an area of expertise for someone who is a psychologist
8 or professor of psychology, someone like Dr. O'Donohue.
9 Someone who spends most of his professional time studying the
10 sexual abuse of children. I can't think of anybody who fits
11 that definition better than Det. Dillon. After that, it's
12 all about what has he read, what studies has he read, what
13 literature has he read. I don't think the answer to that --
14 I think the appropriate way to address it is to voir dire it
15 through qualification of him or through a 402 hearing. We're
16 happy to indulge either of those hearings, if that's at
17 issue.

18 If it's just Mr. Madden who disagrees with the idea
19 that law enforcement could be an expert on human behavior,
20 particularly this kind of human behavior, what he's saying
21 is: I have a real expert on that topic. Then put him up.
22 He's already retained. We disclosed the existence of this
23 expert well in advance of the trial. He has a competing
24 expert, we have this situation all of the time. You think
25 your expert is better than our expert, they are both entitled
26 to testify. So I guess I would just say that there is
27 nothing about Det. Dillon's experience or expertise that's
28 insufficient other than he's not an academician. And in my

1 humble opinion, I will take that expertise every time.

2 Lastly, with respect to Hilda Keller, I guess I
3 wasn't quite sure again what Mr. Madden was suggesting. The
4 three conversations that I listed in my papers were the three
5 conversations that she specifically referenced in the police
6 report. I cannot imagine that that is the sum total of what
7 made her feel so uncomfortable, why she would have put in for
8 a transfer, why she felt like Mr. Chandler's behavior towards
9 her was so offensive and was so sexually motivated, that she
10 ultimately sought relief from her employer.

11 So again, I think the appropriate way to address
12 that is through a 402 hearing so that we could figure out
13 what the sum total is of that testimony, and if necessary,
14 limit it or tailor it. But I want to be clear that I don't
15 think it's appropriate to limit the scope of that testimony
16 to one comment about feet. That doesn't address the concern
17 that we have. The concern we have is, what is Mr. Chandler's
18 intent when he talks about those things? And that is the
19 subject of the motion.

20 THE COURT: Okay. Did you have a response or
21 comment, Mr. Madden?

22 MR. MADDEN: Your Honor, I'm perplexed. Is
23 Ms. Filo suggesting that admissible -- the testimony of the
24 alleged sexual harassment of Ms. Keller is admissible in this
25 trial? She can't be suggesting that. It clearly is not.
26 But I'm having a hard time understanding. Sounded like she's
27 reserving the right to see how things unfold. Let's see how
28 it works out. Plain and simple, an allegation of sexual

1 harassment, even a finding of sexual harassment in 2005 of
2 another adult woman has no relevance or bearing in a child
3 molestation prosecution. The only snidbit that the People
4 should be talking about, and I think that's all they are
5 talking about, but they don't seem to have the ability to
6 admit it, is that specific comment about the feet. And
7 that's what I addressed in my comments too.

8 Just so the record is clear, and I know that it is
9 and I'm being redundant. If the Court will indulge me, I
10 would appreciate it. The problem with Officer Dillon as an
11 expert is that the People have chosen not to use a qualified
12 expert, but to use an officer who is not qualified to testify
13 about these things.

14 From *People v. Raymond*, this is from page 5 of my
15 initial motion to exclude the grooming evidence, starting on
16 page 10 of my brief, starting with the words "in this
17 regard."

18 The court was troubled by the fact that Lanning
19 said that his information and opinions were based on his
20 acquired knowledge and expertise. The court found this
21 insufficient to support a fair assessment of the data used or
22 the reliability of Lanning's opinions. The court was also
23 troubled by any lack of benchmark regarding the frequency of
24 the specific grooming behaviors by the absence of any
25 discussion of false positives, by the absence of any
26 discussion of cases in which grooming behavior is present,
27 but there is no crime, and by the lack of any objective way
28 to test or challenge Lanning's opinion.

1 The court concluded that, quote, for courtroom
2 evidentiary purposes, as far as the record shows, Lanning's
3 categorization of behavioral characteristic of child
4 molesters and child victims is the subjective conclusionary
5 approach that cannot -- reasonably cannot be reasonably
6 assessed for reliability.

7 The court further concluded that the government had
8 not shown that Lanning's testimony would reliability assist a
9 jury in understanding the evidence or determining a fact in
10 issue.

11 In addition, the court concluded that Lanning's
12 testimony carried a severe risk of unfair prejudice because
13 the jury could make a quick and justified jump from Lanning's
14 expert testimony about behavioral patterns to guilt in a case
15 that shows similar patterns.

16 Furthermore, the court concluded that many of
17 Lanning's opinions are actually common sense observations
18 that the government can simply argue in closing.

19 Your Honor, that case is on all fours with this
20 case, and Lanning was a far more qualified witness than
21 Officer Dillon. Thank you.

22 THE COURT: Thank you, Mr. Madden. I'll just note
23 that at least on these two particular issues, I did review
24 all of the moving papers from the initial moving papers that
25 were filed that addressed this issue, and then all of the
26 subsequent specific points and authorities that were filed
27 relating to these particular issues.

28 One thing that you raised, Mr. Madden, that I don't

1 think had specifically been discussed or raised before, at
2 least from the cases I recall, the witnesses that -- the
3 proposed witnesses and the experts concerning grooming also
4 testified about or were requesting to testify about the
5 particular facts of the case.

6 MR. MADDEN: I'm sorry.

7 THE COURT: It seemed like they were being asked
8 questions about the specific facts of the case that they were
9 being called as a witness, giving hypotheticals and what have
10 you.

11 MR. MADDEN: Not in *US v Raymond* was just like
12 this. They were going to basically be testifying to
13 something that has come to be called profile evidence and
14 used in various ways by the People throughout the decades.

15 THE COURT: Right.

16 MR. MADDEN: But in *Raymond*, the subject matter of
17 the testimony was exactly as it is proposed in this case, not
18 to talk about the specifics of this case. In the same way
19 that in *Raymond*, Lanning was not proposing to talk about the
20 specifics of that case.

21 THE COURT: Right. One of the concerns was
22 profiling; correct?

23 MR. MADDEN: Yes.

24 THE COURT: In any event, let me rule on these two
25 issues.

26 Concerning grooming, I have read, as I said, and
27 considered all of the points and authorities that have been
28 filed, as well as taken into consideration all comments that

1 counsel has made this morning and on prior occasions. I have
2 spent a substantial amount of time considering this motion.
3 The issue of grooming as it relates to this specific case is
4 a concern for the Court because of the limited information
5 provided concerning this area, the lack of cases addressing
6 this area, the apparent lack of any published cases in
7 California addressing this area, and the unique facts in this
8 case.

9 I will make some preliminary comments concerning
10 some of the issues raised before I rule. First, the jury
11 need not be wholly ignorant of the subject matter of the
12 opinion to justify its admission. Even if the jury has
13 knowledge of the matter, expert opinion may be admitted
14 whenever it will assist the jury.

15 The expert testimony proposed by Det. Dillon in the
16 area of grooming will be based on his special training and
17 experience. It appears to this court a sufficient foundation
18 could be laid based on information provided.

19 Returning to the limited cases in this area, they
20 generally involve an individual getting the trust of a child
21 and then slowly desensitizing the child to inappropriate
22 behavior, targeting or selecting specific children, and
23 eventually getting the child to agree or consent to certain
24 sexual conduct with their knowledge and then getting the
25 child to agree not to tell.

26 Our fact situation does not fall into the classic
27 grooming cases as described in the cases. As the People
28 state in their motion, although grooming is generally

1 described as a process of gaining a child's trust, the
2 situation in the instant cases is slightly more sophisticated
3 because the victims' abuser was a teacher, as such, he did
4 not necessarily have to gain their trust because he was in a
5 position of trust. He was able to direct them to submit to
6 misconduct without the necessity of gaining trust. He also
7 did not have to seduce or manipulate the victims in
8 cooperating or consenting. He essentially directed them as a
9 teacher in a position of authority to engage in the conduct
10 or exercises occurring. He deceived or tricked the children
11 into participating in the inappropriate conduct.

12 It seems the children may have complied because the
13 defendant was in a position of authority, although it would
14 seem that some level of trust had to be established, so that
15 if the conduct became uncomfortable, a child did not pull off
16 the blindfold or item that prevented them from seeing.

17 It appears this evidence would be to some degree
18 relevant. This case or fact situation does not fall into
19 your classic grooming scenario. Assuming it is relevant in
20 this case, conducting a 352 analysis, balancing the probative
21 value and the prejudicial impact, confusing or misleading the
22 jury in an undue consumption of time, the Court at this time
23 is not going to allow Det. Dillon to testify in the area of
24 grooming.

25 As with many pretrial rulings, once the People have
26 presented a substantial portion of their case in chief, based
27 on the evidence presented through both direct and
28 cross-examination, Ms. Filo, if you believe the Court should

1 reconsider and allow Det. Dillon to testify based on the
2 state of the evidence, bring it to my attention. Or, at the
3 conclusion of the defense's case, if you believe you should
4 be allowed to call Det. Dillon as a rebuttal witness, you
5 obviously may make that request at that time.

6 I wish in this particular matter I could make a
7 firm ruling, but as the evidence is presented and I get more
8 information about the case, both through direct and cross, I
9 may reconsider it. I'm not saying I will change my ruling,
10 but as Ms. Filo suggested in her points and authorities, at
11 one point she argued that based on the case she expects the
12 defense to present, then she should be allowed to rebut it
13 with Det. Dillon. That may be the case. I don't know, but
14 at this point, this is the Court's ruling. So obviously,
15 neither counsel will make any reference to it unless they
16 approach the Court and I make a ruling.

17 This reminds me, I should say this also, I would
18 anticipate that if we reach this point, I would set a time to
19 have a 402 hearing before Det. Dillon will be allowed to
20 testify. So that's the ruling on that particular area.

21 Concerning Ms. Keller, I have read and considered
22 the motions filed by both parties relating to the testimony
23 of Ms. Keller, as mentioned earlier. As with the grooming
24 issue, I have spent a substantial amount of time considering
25 whether to allow or exclude Ms. Keller's testimony and have
26 conducted a 352 analysis. You both raised valid points why
27 or why not her testimony should be allowed. I find that
28 Ms. Keller's testimony is relevant concerning the defendant

1 coming around and contacting her at various points and how
2 she felt about those contexts; specifically, item number one
3 in the People's motion is relevant. Item one states:

4 Chandler came to Ms. Keller's classroom while she
5 was alone. He shut the door behind him. He asked if he
6 could take pictures of her toes for a massage class that he
7 was taking. He asked about massaging her feet.

8 Based on all of the information that has been
9 provided to the Court, Court finds Ms. Keller's testimony
10 would be relevant as it applies to the defendant's intent
11 relating to Victim No. 3.

12 As I mentioned above, I conducted a 352 analysis on
13 this evidence, balancing the probative value with the
14 prejudicial impact, Court finds the probative value outweighs
15 the prejudicial impact. Ms. Keller's testimony will not take
16 an undue consumption of time based on the information
17 provided. Does the Court find her testimony will confuse or
18 mislead the jury? I don't think it is necessary to address
19 every single point raised by each party. For example, the
20 fact Ms. Keller is an adult, Victim No. 3 is a child, I took
21 that into consideration, balanced that fact with a specific
22 body part of interest, the feet, or the People's suggestion
23 that they would have a difficult time proving the offense
24 involving Victim 3 without this evidence.

25 This is not a concern of the Court. My focus is
26 whether the testimony is relevant and should be allowed
27 pursuant to 352. In this instance, the evidence should be
28 presented to the jury and they may give it whatever weight

1 they decide and deserves.

2 Based on the moving papers only, I don't believe
3 that Ms. Keller should be allowed to testify about Items 2 or
4 3 or the workers -- excuse me -- or the sexual harassment
5 claim. However, based on what occurred at the preliminary
6 examination, and I think the potential problems that may be
7 raised by Ms. Keller, before she testifies, we will schedule
8 a 402 hearing so I could listen to her testimony.

9 At this point, it would be my intent to allow her
10 to testify about that one conversation. I expect that based
11 on what I heard at this point, she may be allowed to have --
12 you know, having other conversations with him that may have
13 played a part in her discomfort.

14 So that's the tentative ruling with Ms. Keller. I
15 think that I just wanted to give counsel an idea of how I am
16 leaning towards this particular evidence. It will be
17 probably expanded maybe a little more narrow, depending on
18 the 402 hearing. So we'll have to schedule that.

19 Yes, Mr. Madden.

20 MR. MADDEN: Your Honor, I think I understand the
21 Court's ruling. I think I have an additional comment.

22 THE COURT: Of course.

23 MR. MADDEN: May I ask the Court a question? If
24 Laurie was making an allegation -- Laurie is complaining
25 witness No. 3.

26 THE COURT: Okay.

27 MR. MADDEN: The one ostensibly different than the
28 other four. With the other four, each of the other four have

1 given statements, and the People have argued, and the People
2 will argue, that Mr. Chandler put his penis in the mouths of
3 those four other children. Their argument concerning
4 Ms. Keller seems to be -- the foundation for their position
5 seems to be their difficulty in establishing the intent with
6 respect to the touching of Laurie, because up until this
7 point, the People have no evidence that would support a
8 conclusion that Mr. Chandler put his penis in Laurie's mouth.
9 However, the People have indirectly argued and suggested, and
10 you could tell from the tone of the interrogation by the
11 police, that they -- I believe that the People will argue
12 that it is more probable than not that Mr. Chandler put his
13 penis on Laurie's leg. All right. Stay with me here.

14 THE COURT: Okay.

15 MR. MADDEN: Three of the five complaining
16 witnesses have filed civil lawsuits. It's my understanding
17 that certain allegations have expanded and/or changed. And
18 with respect to Laurie, it's my understanding that the
19 allegation has bloomed to the defendant forcibly putting his
20 penis into her mouth. She never told that to the police in
21 two different interviews. She never said anything about that
22 at the preliminary examination, and although I wasn't the
23 attorney, I have seen the transcript, as the Court has, and
24 there were very specific questions about that. Up until this
25 lawsuit, the allegations were touching with the foot only.

26 What I'm suggesting to the Court is that the Court
27 consider withholding its ruling that you just gave concerning
28 evidence of the defendant's interest in Ms. Keller's feet to

1 see if that's what Laurie does claim at trial. Because if
2 she does, then the foundation or the necessity for
3 Ms. Keller's testimony evaporates because now Laurie is in
4 the same position as the remaining four complaining
5 witnesses.

6 THE COURT: Arguably so, but -- well, I don't want
7 to speak for you, Ms. Filo, but I'm comfortable with the
8 ruling, although it's tentative in the sense that I do want a
9 402 hearing. So is your concern about opening statements?

10 MR. MADDEN: That's what I was just getting to. My
11 immediate concern is I have no difficulty with a subsequent
12 402, the statements. That's what we do in trial. However, I
13 am concerned about an opening statement, and I want to
14 represent that to the Court. And I think that the People at
15 this point should be precluded from mentioning Ms. Keller,
16 identifying her as a witness, or identifying or referring to
17 her in opening statements.

18 MS. FILO: Judge, if I might? Whether he engaged
19 in additional conduct isn't really the point. We haven't
20 charged the defendant with oral copulation because it will be
21 the People's theory throughout this case that we don't
22 actually know exactly what happened in that classroom. What
23 we believe -- what we believe we could prove beyond a
24 reasonable doubt it was sexual. I mean, there are all kinds
25 of kind of crazy elements to Mr. Chandler's behavior, and I
26 don't -- just because there happens to be additional conduct,
27 doesn't mean that the conduct with the feet is any more or
28 less sexual. That can be the basis of a 288 touching and

1 that's why we charged it that way, was to keep our burden --
2 I mean, to keep what we had to prove kind of to that
3 standard, just that any touching was a sexual touching.

4 So whether she -- you know, I don't know. I
5 haven't seen what Mr. Madden is referring to. But whether
6 there is additional conduct or not, the evidence isn't being
7 offered out of necessity; it's offered on theory of intent,
8 which is, you know, specifically permitted under 1101(b). So
9 whether there is additional stuff, I just don't think is the
10 analysis.

11 THE COURT: Yes, Mr. Madden.

12 MR. MADDEN: Your Honor, in all respect to Ms.
13 Filo, I don't have a transcript of the case of People v. Lyn
14 Vijayendran, the vice -- the former principal who was
15 prosecuted for failing to report. However, I have read that
16 on a number of occasions, and that is not the way that Ms.
17 Filo argued what happened in this case with respect to
18 complaining witness No. 2 and Count 2 Becky. It was very
19 clear and she was very emphatic with that jury that this was
20 Mr. Chandler putting his tongue on Becky's foot and putting a
21 penis in her mouth and ejaculating in her mouth. So their
22 position as just stated by Ms. Filo is inconsistent with what
23 she has already argued in the Vijayendran case.

24 THE COURT: You said Becky.

25 MR. MADDEN: I did say Becky, yes.

26 THE COURT: Okay.

27 MR. MADDEN: Lyn Vijayendran was the defendant in
28 that case. Becky is the child in Count 2.

1 THE COURT: Okay.

2 MR. MADDEN: All right. And so I'm troubled by Ms.
3 Filo's representation, that we don't know what happened. I'm
4 not sure what I'm going to argue. She didn't say that. I
5 might have misstated what she just said. That's all I'm
6 reading and my stomach is a pretty good guide for me. I
7 can't just sit here and let that be represented by the People
8 because that's not what the People have argued and that's not
9 what they're going to argue in this case. They are going to
10 argue that it was oral copulation and that he ejaculated in
11 children's mouth's. Period.

12 THE COURT: Okay. At least returning to your
13 points, what you are saying about the civil lawsuit and how
14 it expanded, but at this point, that's the evidence Ms. Filo
15 has; that it's the touching of the feet. And as I understand
16 the fact situation, there was also touching of the face, and
17 the child said it felt like a glue stick; it was sticky. And
18 so I took into consideration the argument or the inference
19 that glue stick, what was sticky on the face, wasn't
20 necessarily a glue stick, but, you know, you could argue a
21 penis. Okay. So I took into consideration it was not just
22 the feet.

23 There is other conduct going on, and you're asking
24 me to limit them as far as what they should be allowed to
25 present after having found that it is relevant. I think
26 that's going to be presented and you're going to be taking
27 the -- or at least questioning the child with credibility.

28 MR. MADDEN: My point is the evidence even of

1 Laurie or concerning Laurie will be clearly, if the act
2 occurred, it was sexual. It's not ambivalent conduct. They
3 are going to argue that it was his penis. I believe what
4 that child when she testifies is going to either testify that
5 he not only did everything that she said before, but he did
6 more as stated in her civil lawsuit; that he forced his penis
7 into her mouth.

8 MS. FILO: If the defendant --

9 MR. MADDEN: Obviously, it's a sexual act,
10 therefore, no need. The only justification for using the
11 testimony about Mr. Chandler's sexual interest in the feet of
12 Ms. Keller is to establish the intent issue on that count.
13 What I'm saying is that that's not necessary, therefore, it's
14 not probative and it's highly prejudicial.

15 THE COURT: Okay. Again, I am comfortable with the
16 ruling, which, Ms. Filo, is very narrow. It may be expanded
17 after a 402 hearing. You could comment about that in opening
18 statements if you choose to do so, in that narrow situation.
19 And this is over Mr. Madden's objection. If that occurs
20 during opening statement, and if there is an objection, your
21 objection is noted, but for my ruling you objected.

22 MR. MADDEN: I won't object during opening
23 statement.

24 THE COURT: I understand.

25 MR. MADDEN: But I do wish to be comfortable
26 knowing exactly what it is Ms. Filo will be allowed to say in
27 her opening statement, what she won't be allowed to say. The
28 reason that I'm uncomfortable about it is that Ms. Filo had

1 difficulty at the preliminary examination, as did the
2 officer, limiting questions and responses consistent with the
3 court's ruling at that time.

4 THE COURT: I understand. And, Mr. Madden, when I
5 say she would be narrow in her opening statements is
6 consistent with my ruling as to item number one, and what she
7 says in that conversation, that he came around, that it made
8 her feel very uncomfortable, which is consistent with what I
9 ruled. I mean, how she felt about that -- those context and
10 what he said I think is relevant.

11 MR. MADDEN: How is it relevant? That she felt
12 sexually harassed?

13 THE COURT: No, I didn't say sexually harassed.

14 MR. MADDEN: Clearly, she was sexually harassed.

15 THE COURT: Well, she felt uncomfortable about what
16 was occurring.

17 MR. MADDEN: That is what sexual harassment is.

18 THE COURT: We could call it whatever we want, but
19 you're telling me she thinks it's only fair to make these
20 comments and not to testify how it made her feel if she
21 wasn't uncomfortable.

22 MR. MADDEN: Yes, I totally mean that. She
23 could -- I believe that the Court's -- I believe the Court's
24 ruling is incorrect. But notwithstanding that, it's more
25 incorrect if she's allowed to express her feelings about how
26 she felt about that. It's not necessary.

27 MS. FILO: Judge --

28 THE COURT: You want to respond?

1 MS. FILO: Yes, Your Honor. I mean, it is not -- I
2 mean, if the evidence were: Mr. Chandler came into a room
3 and said, Hey, you got a nice pedicure, that was the end of
4 it, that's not relevant. But when he does it with a sexual
5 intent, with a -- as the defense has even described it, kind
6 of this creepy interest in an abnormal body part, that's what
7 makes it relevant. So unless there is some -- unless there
8 is something to give the comment context, then it's not --
9 then it's not relevant. I mean, it's only relevant if that
10 is accompanied by her very clear sense and feeling that this
11 was part of a larger sexual interest in her. I mean, that's
12 the only way that it's relevant. Otherwise, it's: Hey,
13 could I take a picture of your feet? I mean, kind of weird,
14 but it's not -- it's the sexual component of it that makes it
15 relevant.

16 THE COURT: I think her feeling of discomfort is
17 relevant. Obviously, she can't testify to Mr. Chandler's
18 intent and what his motives were. But, Ms. Filo, I think
19 it's important that you keep your comments narrow with
20 Ms. Keller, you know, obviously until we have a 402 hearing,
21 but I'm not going to know specifically what she's going to
22 testify to or how comfortable I feel about the parameters of
23 her testimony.

24 MS. FILO: Your Honor, would it be possible to
25 schedule that hearing? I know we're not usually in session
26 on Fridays, but we may run a little short the week of July
27 the 8th. Maybe we could do July 12th, that way we could have
28 that hearing done prior to opening statements?

1 THE COURT: We can't do it July -- well, right now
2 I don't think we could do it July 12th because I don't expect
3 to be here.

4 MS. FILO: Okay. That will be a problem.

5 THE COURT: But I have to confirm whether I will be
6 here or not that particular day. If I'm here, yes.

7 MS. FILO: All right. I would be happy to see if
8 Ms. Keller will be available maybe for an hour or so on the
9 11th. But I guess my point is, or my thought is, that I'm
10 more than happy to do the 402 hearing prior to opening
11 statements, if that could be accommodated within the Court's
12 schedule.

13 THE COURT: Okay. Which we'll address --

14 MS. FILO: As it goes.

15 THE COURT: -- in chambers when we talk about
16 scheduling this morning.

17 MS. FILO: Okay.

18 THE COURT: Yes, Mr. Madden.

19 MR. MADDEN: Are we done with that, Your Honor?

20 THE COURT: Yes, we are.

21 MR. MADDEN: Okay. We could go off the record if
22 you want.

23 THE COURT: Yes.

24 (Whereupon, there was a discussion off the record.)

25 THE COURT: We'll go on the record on the matter of
26 the People v. Chandler. Mr. Chandler is present, Mr. Madden
27 is present, Ms. Filo is present. We had informal discussions
28 in chambers concerning jury selection that is going to begin

1 Monday, and we have addressed these issues.

2 At this time, we're going to recess for the rest of
3 the day. I'll order Mr. Chandler and both counsel here at
4 9:00 o'clock Monday, July 1st, and we'll begin jury selection
5 at that time.

6 MR. MADDEN: Thank you, Your Honor.

7 (Whereupon, the Court recessed.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

19 Dated:

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 5)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 5

PAGES 468 - 486

JULY 3, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

FORM NO. 0000-0000-0000-0000-0000

DEFENDANT.

CASE NO. C1223754

— — — 00 — — —

JULY 3, 2013

— — — 00 — — —

JAMIE L. MIXCO
C.S.R. No. 12708

1 San Jose, California July 3, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen. I'll
4 call the matter of the People v. Chandler.

5 Counsel, state your appearances for the record.

6 MR. MADDEN: Brian Madden appearing for Mr.
7 Chandler, Your Honor. He's personally present in custody.

8 MS. FILO: Good afternoon, Your Honor. Alison Filo
9 for the People. Present in court this afternoon, I'll let
10 him make his own appearance, the attorney for Laurie Doe.

11 THE COURT: Thank you.

12 MR. MATIASIC: Good afternoon, Your Honor. Paul
13 Matiasic on behalf of the victim, Laurie Doe.

14 THE COURT: Okay. Thank you. What is the status?

15 MS. FILO: Your Honor, if I may? Mr. Matiasic and
16 I had a conversation. We've had some continuing
17 conversations over the last few days. When Mr. Madden made
18 some arguments with respect to one of our motions in limine,
19 he made reference to the idea that the allegations with
20 respect to Laurie Doe had greatly expanded and were greater
21 than those disclosed to the San Jose Police Department and/or
22 disclosed at the preliminary hearing in May of last year.

23 In an attempt to follow up on those
24 representations, I contacted Mr. Matiasic and was informed
25 that, yes, in fact those allegations had expanded and that
26 they had come in the context of a attorney/client privilege
27 or work-product privileged situation. I let Mr. Matiasic
28 know that I would be discussing it with the Court, and did so

1 the following morning.

2 It was my understanding from the conversation with
3 the Court and with counsel that sort of the difficult way to
4 do this would be to have Laurie come in pursuant to a
5 subpoena or a court order, that she would be compelled to
6 testify; that she would be required to disclose the name of
7 the expert or consultant with whom she gave statements that
8 were either consistent or inconsistent with previously given
9 statements. Armed with that information, I contacted Mr.
10 Matiasic again, let him know what the Court's intended ruling
11 was, and suggested to him that the easier way to do this
12 might be through stipulation and order with a waiver of the
13 privilege.

14 Mr. Matiasic had some concerns about the impact
15 that might have on the civil case, and we discussed the
16 possibility of preparing a protective order, which would
17 address his concerns in the civil case, but still give us the
18 information we believe we need, and I believe ultimately will
19 be compelled by the Court in the criminal case.

20 I have prepared a proposed stipulation and order.
21 I e-mailed that to both the Court and counsel this morning.
22 I -- and to Mr. Matiasic. I brought hard copies today. I
23 think Mr. Matiasic has a few concerns he would like to
24 address with the Court. But otherwise, I believe that with
25 that -- with the execution of that protective order, the name
26 of the psychiatrist with whom Laurie met and will be
27 disclosed and a waiver will be entered with respect to
28 that -- with respect to any statements made to her and all

1 subject to the protective order that we would execute as
2 proposed.

3 THE COURT: Okay. Ms. Filo, thank you for putting
4 that on the record. I will note that, as you mentioned, we
5 did have informal discussions about this particular issue,
6 and everything that you said essentially was discussed
7 informally.

8 Mr. Madden, do you wish to supplement anything that
9 Ms. Filo had said, at least at this point?

10 MR. MADDEN: No. I agree with her summary, and
11 although I did not look at my computer, I came over here, I'm
12 sure it's in there and I have a hard copy. I read the
13 proposed stipulation and order. It looks appropriate to me,
14 as does the proposed waiver of privilege for which Mr.
15 Matiasic signed.

16 THE COURT: Okay.

17 Counsel, you had some concerns that you wanted to
18 raise at this point?

19 MR. MATIASIC: I did. Thank you very much, Your
20 Honor. I appreciate the opportunity to be heard. Basically,
21 the reason why we came down here was, as Ms. Filo indicated,
22 she was kind enough to let us know the direction the Court
23 appeared to be headed, but we certainly had some concerns
24 with respect to the contours of and the parameters in which
25 this particular information would, number one, be
26 disseminated; and number two, be used to provide the
27 backdrop.

28 Perhaps it is kind of echoing some of what counsel

1 has already told you, but this wasn't any type of treating
2 therapist with whom the victim sought out treatment and went
3 to treatment and disclosed certain materials. This was
4 someone selected by me. This is basically my consultant, and
5 I consider it to be protected under the ambit of both the
6 attorney/client privilege and the word-product as described
7 in CC 2018.

8 So, you know, frankly, I'm just having difficulty
9 seeing how, you know, my consultant's identity, you know,
10 should be disclosed in the context of this criminal
11 proceeding without having a benefit of any type of
12 additional, you know, protection in terms of how it will be
13 utilized in the civil proceedings.

14 I guess my first question is: If we turn over this
15 type of information, has the Court made any type of
16 definitive ruling? I'm ignorant to what the nature of the
17 motion in limine was in the criminal matter. I request how
18 it will be utilized in the context of the criminal case.

19 THE COURT: Essentially, what I perceive that is
20 going to occur is whatever information this psychiatrist had
21 important to the interview with Laurie will be provided to
22 court. I will view that information in-camera. Once I
23 review the information, if I believe that certain
24 information, certain statements that Laurie made to the
25 psychiatrist are relevant to those proceedings, then those
26 particular statements will be disclosed to counsel.

27 As I perceive what's going to happen is I have the
28 documents. What I think is relevant will be unredacted. So

1 I will redact everything that I believe isn't relevant to
2 being disclosed. Okay. The actual information I have will
3 be put in a confidential, sealed envelope as well as the
4 redacted copy. So I have the original and what I'm
5 disclosing to counsel.

6 I'm assuming that, as you may appreciate, the name
7 of the psychiatrist will have to be disclosed in the event
8 that Laurie testifies, and then there is some inconsistencies
9 or consistencies -- as I foresee what will happen is there
10 are other Evidence Codes exceptions that will allow the
11 People to call her as well.

12 I'm not sure if this is all the things you already
13 know or I'm just repeating what -- or basically this is the
14 way I foresee this happening. Do you have any concerns or
15 comments based on that?

16 MR. MATIASIC: Well, Your Honor, I think in terms
17 of procedurally, how we go about disclosing the information
18 to the Court and language of the protective order seems to be
19 appropriate. I guess what I have concerns about later too,
20 and my consultant has already raised to me is, you know,
21 someone was desirous of trying to call her as a witness in a
22 criminal proceeding, you know, this consultant doesn't appear
23 without having her fee paid. And because I got her involved
24 in this case, you know, we certainly are not going to be
25 footing the bill to have her come in and testify, you know,
26 unless it's for us in the civil proceeding.

27 So I know she's concerned about the effect it has
28 on her ability to relate with Laurie going forward, but I

1 could see that the Court is headed in that direction and so,
2 you know, I think that alleviates my concern for now. But we
3 want to reserve the right to be heard once that information
4 is disseminated to counsel in terms of, you know, what type
5 of use it may have in the criminal proceedings, if that's
6 okay with the Court.

7 THE COURT: Absolutely. Absolutely.

8 MR. MATIASIC: The other issue that I've raised,
9 which I think it's important, that this information not be
10 disseminated. Ultimately may come out in the criminal
11 context, I understand that. But at least until that point in
12 time, you know, we don't want it released to any of the
13 attorneys of record or any of their experts, consultants, et
14 cetera, in the civil action as well. So if we could make
15 that part of that order, we certainly would appreciate it.

16 THE COURT: Is that contained in the stipulated
17 order that you prepared, Ms. Filo?

18 MR. MADDEN: I believe it is.

19 THE COURT: I thought it was. If not directly
20 addressed, it was indirectly addressed because I could
21 control that until Laurie testifies. And then as you know,
22 it's a public record. It's going to be part of the
23 testimony.

24 Ms. Filo, is that addressed in --

25 MS. FILO: Judge, what I think I put in here was
26 that it's --

27 THE COURT: I thought it was pretty clear to me
28 that any information I release to you is only going to be

1 used by you folks, maybe investigators, other experts that
2 you will be consulting with. It will not be disseminated
3 anyway.

4 MS. FILO: What I said is the confidential records
5 should be retained by the attorneys in the criminal case and
6 used only in and for the benefit of the criminal case. The
7 documents may not be furnished to anyone other than those
8 within the employee of the District Attorney, the Law Offices
9 of Madden and Redding, or experts and consultants retained by
10 either of those offices to assist in the criminal action.

11 All confidential material shall be kept in the
12 office of the District Attorney or the Law Offices of Madden
13 and Redding. No copy of the materials should leave those
14 offices, including via electronic transmission of any sort
15 for any purpose except for transmissions between counsel and
16 experts or for use in connection with the criminal
17 proceedings in this matter.

18 MR. MATIASIC: Your Honor, I certainly think it
19 addresses it indirectly. I think the million-dollar question
20 for us, you know, whether or not the attorney who represents
21 Mr. Chandler in the civil action falls under the purview of
22 experts, consultant, et cetera.

23 MR. MADDEN: No.

24 THE COURT: Okay. So Mr. Madden is making it very
25 clear that the civil attorney is not going to be provided
26 this information. Am I correct, Mr. Madden?

27 MR. MADDEN: I expect to be ordered not to provide
28 it.

1 THE COURT: Okay. Thank you. Then I will
2 definitely do that.

3 MR. MADDEN: I do want to address something else
4 that counsel had mentioned and concerning fees. I don't know
5 necessarily which party will be subpoenaing the doctor.
6 However, if she's testifying, it's my expectation and my
7 understanding she'll be testifying as a percipient witness as
8 to a statement. She was not asked to give an expert opinion,
9 won't be called as an expert, and I don't think her
10 professional fee, I don't think she's entitled really to
11 anything other than a witness fee.

12 THE COURT: Ms. Filo.

13 MR. MADDEN: That's just my observations.

14 MS. FILO: So, Your Honor, I think we have reserved
15 the right. When we talked about this informally, we had
16 talked about whether or not we would need to use the
17 psychiatrist in a dual capacity. It is clearly my
18 expectation that the defense will make noise about the idea
19 that Laurie has given fundamentally inconsistent statements.
20 To the extent that they do that, I think the People then have
21 both the right and the obligation as an effective advocacy to
22 provide the jury with some explanation as to how or why that
23 might have happened. It may very well be that the
24 psychiatrist who took that statement as a percipient witness
25 may be the best person to provide that information. I don't
26 know that because I haven't really spoken to her, and I don't
27 know what she would say in that regard.

28 So what I wanted to be clear about was that I think

1 she qualifies as both a Evidence Code §1360 witness, person
2 to whom an act of child abuse was described, and the hearsay
3 exception that applies thereto, but may also be needed for
4 purposes of explaining to the jury why this inconsistency
5 might exist in the context of the case like this.

6 So whether it's this particular psychiatrist or
7 another expert, I do think the People at this point with this
8 knowledge now have some obligation and right to explain to
9 the jury how this inconsistency arose. If we are going to
10 use her as an expert, I expect we would have to pay her as
11 well.

12 MR. MADDEN: I have no objection to the People
13 paying anyone, Your Honor. I want to make it clear we were
14 not going to be doing that. Secondly, I will represent to
15 the Court that I will vigorously oppose the People using this
16 witness as an expert to explain any inconsistencies for
17 reasons that will be clear in the moving papers I expect to
18 file.

19 THE COURT: Okay. I will note that we did discuss
20 this informally.

21 MR. MADDEN: Yes.

22 THE COURT: Mr. Madden clearly objected to the
23 unknown psychiatrist being called in a dual role. You
24 indicated that it's something that you want to reserve the
25 right to raise once you get the information.

26 Based on the little information I have, we don't
27 know whether it's inconsistent statements or simply an
28 expansion of what occurred. In any event, it's my intent to

1 sign the protective order, and does counsel know when I will
2 be provided information about what was said, the documents,
3 what have you?

4 MR. MADDEN: My understanding, counsel has them
5 now.

6 MR. MATIASIC: Your Honor, I'm prepared to furnish
7 it to the Court today.

8 THE COURT: Okay. Thank you. That was my
9 understanding that's what was going to occur. So I'm going
10 to -- the protective order that you e-mailed me, Ms. Filo, is
11 that the same one you have or different?

12 MS. FILO: It's a little bit different. I found
13 one sentence in there that was incomplete.

14 THE COURT: If you would provide me that?

15 MS. FILO: Maybe we should just circulate this as
16 one document. If I could approach?

17 THE COURT: Yes. We're off the record while we
18 sign this.

19 (Whereupon, there was a discussion off the record.)

20 MS. FILO: Your Honor, at this time, the People and
21 the defense have signed the stipulation and order. Pursuant
22 to that order, a copy of the curriculum vitae of the
23 psychiatrist with whom Laurie met is being provided to the
24 defense. I'm handing it to him now in court.

25 THE COURT: What is being provided?

26 MS. FILO: It's the curriculum vitae, the CV of the
27 psychiatrist, and I assume Mr. Matiasic will give the
28 documents to the Court that will be reviewed in-camera.

1 THE COURT: We'll have the order filed. And just
2 so the record is clear, I will specifically order Mr. Madden
3 not to provide any information that the Court releases to Mr.
4 Chandler's civil lawyer, or any other lawyer involved in that
5 civil action. I think the protective order is clear, but
6 just for clarity purposes, I will make that order as well.

7 I will conduct an in-camera hearing of the records
8 I review and try to make a ruling as soon as possible. I'm
9 not sure if there is a lot or very little or how much time it
10 will take me. If I'm able to, I will provide it to counsel
11 by Monday, a ruling at least, but definitely sometime next
12 week. Are you all comfortable with that? I know you want it
13 as soon as possible, and I know looking at Mr. Madden, is it
14 possible to do it this afternoon?

15 MR. MADDEN: Judge, you don't know me that long,
16 but you have figured me out.

17 THE COURT: Okay. We could -- I could take a look
18 at it this afternoon and --

19 MR. MADDEN: Your Honor, just do your best.

20 THE COURT: If you want to stick around.

21 MR. MADDEN: Let me stick around for a while, see
22 how you are doing. If you are telling me that it will take a
23 month, I will go home.

24 THE COURT: Let's go off the record briefly.

25 (Whereupon, there was a discussion off the record.)

26 (Whereupon, an in-camera hearing was held, and the
27 transcript of the proceedings, Volume 5, pages 482 through
28 484, is sealed by order of the Court and is under separate,

1 sealed cover.)
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1 (Whereupon, an in-camera hearing was concluded, and
2 the transcript of the proceedings, Volume 5, pages 482
3 through 484, is sealed by order of the Court and is under
4 separate, sealed cover.)

5 THE COURT: We'll go on the record on the matter of
6 the People v. Chandler. Record will reflect that all counsel
7 have left the courtroom. They left just a few minutes ago.
8 The Court has reviewed the documents. Counsel's informed of
9 that, and the redacted copies will be faxed to each attorney
10 pursuant to their agreement and stipulation, and I am
11 ordering that the original and the Court's redacted copy be
12 sealed in a confidential envelope and not be open without
13 further order of this court. That will give any reviewing
14 court an opportunity to see the original and what the Court
15 redacted.

16 That concludes the matter. We'll be in recess.

17 (Whereupon, the Court recessed.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

19 Dated:

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

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EXHIBIT 3

(Vol. 6)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 6

PAGES 487 - 498

JULY 10, 2013

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REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SANTA CLARA
 3 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
 4 DEPARTMENT NO. 37

5 ---o0o---

6
 7 THE PEOPLE OF THE
 8 STATE OF CALIFORNIA,

9 PLAINTIFF,

10 v.

11 CRAIG RICHARD CHANDLER,

12 DEFENDANT.
 13 _____/

CASE NO. C1223754

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 15 ---o0o---

16
 17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 JULY 10, 2013

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 20 ---o0o---

21
 22
 23 APPEARANCES:

24 FOR THE PEOPLE:

ALISON FILO
 Deputy District Attorney

25
 26 FOR THE DEFENDANT:

BRIAN MADDEN
 Attorney at Law

27
 28 OFFICIAL COURT REPORTER:

JAMIE L. MIXCO
 C.S.R. No. 12708

1 San Jose, California

July 10, 2013

2 PROCEEDINGS

3 THE COURT: Before we take our recess, I'm going to
4 read just a few instructions that aren't going to take me
5 very long, and then once I finish reading the instructions,
6 I'm going to go over informally some scheduling issues and
7 some other things related to this trial before we take our
8 recess.

9 Our system of justice requires that trials be
10 conducted in open court, with the parties presenting
11 evidence, and the judge deciding the law that applies to the
12 case. It is unfair to the parties if you receive additional
13 information from any other source, because that information
14 may be unreliable or not relevant, and the parties will not
15 have had the opportunity to examine and respond to it.

16 Your verdict must be based only on the evidence
17 presented during the trial in this court and the law as I
18 provide it to you.

19 During the trial, do not talk about the case or
20 about any of the people or any subject involved in the case
21 with anyone, not even your family, friends, spiritual
22 advisors, or therapists.

23 Do not share information about the case in writing,
24 by e-mail, by telephone, on the Internet, or by any other
25 means of communication. You must not talk about these things
26 with other jurors either until you begin deliberating.

27 As jurors, you may discuss the case together only
28 after all of the evidence has been presented, the attorneys

1 have completed their arguments, and I have instructed you on
2 the law. After I tell you to begin your deliberations, you
3 may discuss the case only in the jury room and only when all
4 jurors are present.

5 You must not allow anything that happens outside of
6 the courtroom to affect your decision.

7 During the trial, do not read, listen to, or watch
8 any news report or commentary about the case from any source.
9 Do not use the Internet or any other electronic source or
10 device in any way in connection with this case, either on
11 your own or as a group.

12 Do not investigate the facts or the law or do any
13 research regarding this case. Do not conduct any tests or
14 experiments or visit the scene of any events involved in this
15 case. If you happen to pass by the scene, do not stop or
16 investigate.

17 If you have a cell phone or other electronic
18 device, keep it turned off while you're in the courtroom and
19 during deliberations. Electronic device includes any data
20 storage device. If someone needs to contact you in an
21 emergency, the court could receive messages that will be
22 delivered to you without delay.

23 During the trial, do not speak to a defendant,
24 witness, lawyer, or anyone associated with them. Do not
25 listen to anyone who tries to talk to you about the case or
26 about the people or subjects involved in it. If someone asks
27 you about the case, tell him or her that you cannot discuss
28 it. If that person keeps talking to you about the case, you

1 must end the conversation.

2 If you receive any information about this case from
3 any source outside of the trial, even unintentionally, do not
4 share that information with any other juror. If you do
5 receive such information, or if anyone tries to influence you
6 or any juror, you must immediately tell the courtroom deputy.

7 Keep an open mind throughout the trial. Do not
8 make up your mind about the verdict or any issue until after
9 you have discussed the case with the other jurors during
10 deliberations.

11 Do not take anything I say or do during the trial
12 as an indication of what I think about the facts, the
13 witnesses, or what your verdict should be.

14 Do not let bias, sympathy, prejudice, or public
15 opinion influence your decision.

16 You must reach your verdict without any
17 consideration of punishment. I want to emphasize that you
18 may not use any form of research or communication, including
19 electronic or wireless research or communication to research,
20 share, communicate, or allow someone else to communicate with
21 you regarding any subject of the trial.

22 When the trial has ended and you have been released
23 as jurors, you may discuss the case with anyone, but under
24 California law, you must wait at least 90 days before
25 negotiating or agreeing to accept any payment for information
26 about the case.

27 You will be given notebooks and you may take notes
28 during the trial. Do not remove them from the courtroom.

1 You may take your notes into the jury room during
2 deliberations.

3 I do not mean to discourage you from taking notes,
4 but here are some points to consider if you take notes:

5 One, note-taking may tend to distract you. It may
6 affect your ability to listen carefully to all of the
7 testimony and to watch the witnesses as they testify;

8 And two, the notes are for your own individual use
9 to help you remember what happened during the trial. Please
10 keep in mind that your notes may be inaccurate or incomplete.

11 At the end of the trial, your notes will be
12 collected and destroyed.

13 You must decide what the facts are in this case.
14 You must use only the evidence that is presented in the
15 courtroom. Evidence is the sworn testimony of witnesses, the
16 exhibits admitted into evidence, and anything else I tell you
17 to consider as evidence.

18 The fact that the defendant was arrested, charged
19 with a crime, or brought to trial is not evidence of guilt.
20 Nothing that the attorneys say is evidence. In their opening
21 statements and closing arguments, the attorneys will discuss
22 the case, but their remarks are not evidence. Their
23 questions are not evidence. Only the witness's answers are
24 evidence. The attorneys' questions are significant only if
25 they help you understand the witness's answers.

26 Do not assume that something is true just because
27 one of the attorneys asked a question that suggests it is
28 true.

1 During the trial, the attorneys may object to
2 questions asked of a witness. I will rule on the objections
3 according to the law. If I sustain an objection, the witness
4 will not be permitted to answer, and you must ignore the
5 question. If the witness does not answer, do not guess what
6 the answer might have been or why I ruled as I did.

7 If I order testimony stricken from the record, you
8 must disregard it and you must not consider that testimony
9 for any purpose.

10 You must disregard anything you see or hear when
11 the court is not in session, even if it is done or said by
12 one of the parties or witnesses.

13 You alone must judge the credibility or
14 believability of the witnesses. In deciding whether
15 testimony is true and accurate, use your common sense and
16 experience. You must judge the testimony of each witness by
17 the same standards, setting aside any bias or prejudice you
18 may have. You may believe all, part, or none of any
19 witness's testimony. Consider the testimony of each witness
20 and decide how much of it you believe.

21 In evaluating a witness's testimony, you may
22 consider anything that reasonably tends to prove or disprove
23 the truth or accuracy of that testimony.

24 Among the factors you may consider are:

25 How well could the witness see, hear, or otherwise
26 perceive the things about which the witness testified?

27 How well was the witness able to remember and
28 describe what happened?

1 What was the witness's behavior while testifying?

2 Did the witness understand the questions and answer
3 them directly?

4 Was the witness's testimony influenced by a factor
5 such as bias or prejudice, a personal relationship with
6 someone involved in the case, or a personal interest in how
7 the case is decided?

8 What was the witness's attitude about the case or
9 about testifying?

10 Did the witness make a statement in the past that
11 is consistent or inconsistent with his or her testimony?

12 How reasonable is the testimony when you consider
13 all of the other evidence in the case?

14 Did other evidence prove or disprove any fact about
15 which the witness testified?

16 Did the witness admit to being untruthful?

17 Do not automatically reject testimony just because
18 of inconsistencies or conflicts. Consider whether the
19 differences are important or not. People sometimes honestly
20 forget things or make mistakes about what they remember.
21 Also, two people may witness the same event, yet see or hear
22 it differently.

23 If you do not believe a witness's testimony, that
24 he or she no longer remembers something, that testimony is
25 inconsistent with the witness's earlier statements on that
26 subject.

27 If you decide that a witness deliberately lied
28 about something significant in this case, you should consider

1 not believing anything that witness said. Or, if you think
2 the witness lied about some things, but told the truth about
3 others, you may simply accept the part that you think is true
4 and ignore the rest.

5 The trial will proceed in the following manner:

6 The attorneys will be permitted to make opening
7 statements if they choose to do so. An opening statement is
8 not evidence, neither is it an argument. The attorneys are
9 not permitted to argue the case at this point in the
10 proceedings. An opening statement is simply an outline or
11 road map by counsel of what he or she believes or expects the
12 evidence will show in this trial. Its sole purpose is to
13 assist you in understanding the case as it is presented to
14 you.

15 The People will then present evidence which they
16 believe supports the charges and allegations contained in the
17 Information. The defendant may present evidence, but
18 remember, the defendant does not have to do so. The burden
19 is on the People to prove every charge and allegation beyond
20 a reasonable doubt.

21 Thereafter, I will instruct you on the applicable
22 law, then each attorney will have an opportunity to present
23 oral arguments in support of their side of the case. This is
24 their opportunity to tell you why they believe the evidence
25 supports their view of the case.

26 You will then retire to consider your verdicts.
27 Your verdicts must be unanimous.

28 In closing, I would also like to note that during

1 the trial, I may allow conferences with the lawyers at
2 sidebar. If this is allowed, it usually involves a question
3 of law or issue that may not be appropriate to discuss in
4 front of the jury. You are not to speculate about these
5 sidebar conferences or try to listen to what is being said,
6 nor are you to form any prejudicial opinion against a lawyer
7 or the side the lawyer represents because that lawyer
8 requests such a sidebar conference. I ask you to be patient
9 about these conferences if they occur. For more often than
10 not, such conferences make the proceedings move faster.

11 Finally, I would like to emphasize the importance
12 of being on time. We could not proceed with the trial if
13 anyone is not present.

14 At this time, we'll briefly go off the record so
15 that the Court could go over issues such as scheduling.

16 (Whereupon, there was a discussion off the record.)

17 THE COURT: We'll go back on the record. Record
18 will reflect that the Court had informal discussions with the
19 jury about scheduling and other issues that may come up
20 during the course of the trial. We're going to recess at
21 this time.

22 All members of the jury, you are ordered to report
23 to the jury assembly room on the second floor Monday, July
24 15th, at 9:00 a.m. And when you come to the courtroom, we
25 will begin the trial with opening remarks and witnesses will
26 be called to testify. Please do not leave the courtroom
27 without your jury badge and a little piece of paper with the
28 identifying information with my name, court, and phone

1 number. Have a safe weekend and see you all on Monday.

2 Let's go back on the record. Record will reflect
3 the jury has been excused until Monday morning. Both Mr.
4 Chandler and counsel are here. I will order both Mr.
5 Chandler and counsel here tomorrow morning at 9:00 a.m. for
6 further in limine motions. So we'll be in recess until
7 tomorrow morning.

8 MS. FILO: Thank you, Your Honor.

9 MR. MADDEN: Thank you, Your Honor.

10 THE COURT: Welcome.

11 (Whereupon, the Court recessed.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18

19 Dated:

20

21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."